

IN THE MATTER OF
THE RAYMOND LEE ORGANIZATION, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 9045. Complaint, July 15, 1977 — Final Order, Nov. 1, 1978

This order, among other things, requires a New York City idea promotion company and two individual parties to cease misrepresenting the nature and value of their services; their qualifications and ability to refine and successfully promote inventions, ideas, and products; and the probability of financial gain to their clients. Respondents are further required to include specified statements in promotional literature and contracts which cite the number of recent customers who achieved financial success through the firm's efforts; disclose that additional costs may be incurred; and advise potential purchasers that the company makes no evaluations as to the patentability and marketability of submissions. Additionally, the order requires respondents to provide purchasers with a ten-day cooling-off period in which to cancel their contracts and receive full refunds.

Appearances

For the Commission: *Harriet Guber Mulhern and Myer S. Tulkoff.*

For the respondents: *Malcolm I. Lewin and Edgar J. Royce, Lans, Feinberg & Cohen, New York City for Raymond Lee Organization, Inc. and Raymond Lee and Michael C. Devine, Schwenke & Devine, New York City for Lawrence Peska.*

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 The Raymond Lee Organization, Inc., a corporation, Raymond Lee, individually and as an officer of said corporation, and Lawrence Peska, individually and as a former officer of said corporation, hereinafter sometimes 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 charges in that respect as follows:

PARAGRAPH 1. Respondent The Raymond Lee Organization, 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 230 Park Ave., New York, New York. Affiliated offices are located at 20 Providence St., Boston, Massachusetts; 230 Peachtree St., N.W., Atlanta, Georgia; 625 North Michigan

Ave., Chicago, Illinois; [2] 4601 Madison Ave., Kansas City, Missouri; 666 Sherman St., Denver, Colorado; 6060 North Central Expressway, Dallas, Texas; 1 Allen Center, Houston, Texas; 5455 Wilshire Boulevard, Los Angeles, California; One Embarcadero Center, San Francisco, California; One Place Ville Marie, Montreal 2, Ontario; and 700 West Georgia St., Vancouver 1, British Columbia.

Respondent Raymond Lee is an individual and is the principal owner and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Lawrence Peska is an individual and a former officer of the corporate respondent and, while an officer, directed, formulated and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time in the past, have been engaged in the advertising, solicitation, offering for sale, sale and distribution of services to inventors and prospective inventors and to other persons with ideas for products in connection with the purported development, advice, and research for patent application, alleged introduction to industry and the purported marketing, sale or licensing of said inventions or ideas.

In the course and conduct of their business, respondents, their employees, agents or representatives, perform preliminary patent searches, prepare patent applications on inventions for submission to the United States Patent Office and to foreign patent offices, and compile "Notices of Invention" for distribution to manufacturers.

COUNT 1

PAR. 3. The allegations of Paragraphs One and Two above are incorporated by reference in Count I as if fully set forth verbatim. [3]

PAR. 4. Respondents have contracted to sell and have sold such services to purchasers located throughout the United States and have caused, and are now causing their services to be advertised, offered for sale and sold by means of newspaper and magazine advertisements, flyers, brochures and other printed literature of interstate circulation as well as by direct personal contact with prospective purchasers through letters, contracts, payments of monies and by other documents and instruments which have been transmitted by means of the United States mail, from respondents' principal place of business in New York State to such prospective purchasers located in numerous other states. There has been present at all times mentioned herein a substantial course of trade in the

sale of respondents' services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale of services to inventors and to other persons with ideas for products is and has been substantial.

PAR. 5. Respondents are now and at all times mentioned herein have been in substantial competition in or affecting commerce with other corporations, firms and individuals engaged in the advertising, offering for sale and sale of services of the same general kind and nature as those advertised, offered for sale and sold by respondents.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their services, respondents have made, and are now making, certain statements and representations in connection with the advertising, offering for sale, sale and distribution of said services. By means of advertisements in various publications of general circulation, other advertising and promotional material, letters mailed to prospective clients, contracts or oral or written sales presentations, respondents have made, and are now making statements and representations regarding respondents' business and professional qualifications and the nature and value of their services. [4]

PAR. 7. By and through the statements and representations alleged in Paragraph Six, herein, respondents have represented, and are now representing, directly or indirectly, that:

1. Respondent Raymond Lee is a registered patent attorney, a registered patent agent, or a licensed attorney.

2. Respondents are qualified or recognized by the United States Patent Office to prepare, file or prosecute applications for patents before said office on behalf of their customers.

3. Purchasers of respondents' services do not need to employ or pay extra fees for the services of outside patent counsel, or other outside specialists, after they have entered into a contract with respondents as respondents provide all the necessary services ranging from patent preparation and prosecution through ultimate marketing of the patented item.

4. Respondents substantially develop or technically refine inventions or ideas for new products submitted to them by their customers.

5. Respondents actively and successfully introduce, promote, and negotiate, on behalf of their customers, with manufacturers who have notified respondents of their interest in acquiring rights to inventions or ideas for new products in the area of the customers' inventions or ideas.

6. Respondents provide potential purchasers of their services

with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and marketability of their ideas for a new product, on which said potential purchasers can rely prior to contracting with respondents. [5]

7. Respondents act without unnecessary delay on behalf of their customers in an effort to gain patent protection for the customers' ideas or inventions.

PAR. 8. In truth and in fact:

1. Respondent Raymond Lee is not a registered patent attorney, a registered patent agent, or a licensed attorney.

2. Respondents are not qualified or recognized by the United States Patent Office to prepare, file or prosecute applications for patents before said office.

3. Purchasers of respondents' services do need to employ or pay extra fees for the services of outside patent counsel, or other outside specialists, after they have entered into a contract with respondents as respondents do not provide all the necessary services ranging from patent preparation and prosecution through ultimate marketing of the patented item.

4. Respondents, in a significant number of instances, do not substantially develop or technically refine inventions or ideas for new products submitted to them by their customers.

5. Respondents, in a significant number of instances, do not actively and successfully introduce, promote and negotiate, on behalf of their customers, with manufacturers who have notified respondents of their interest in acquiring rights to inventions or ideas for new products in the area of the customers' inventions or ideas.

6. Respondents, in a significant number of instances, do not provide potential purchasers of their services with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and marketability of their ideas for a new product, on which potential purchasers can rely, prior to contracting with respondents. [6]

7. Respondents, in a significant number of instances, do not act without unnecessary delay on behalf of their customers in an effort to gain patent protection for the customers' ideas or inventions.

Therefore, the statements, representations, acts and practices regarding respondents' qualifications and services as set forth in Paragraph Seven were, and are, false, misleading, deceptive and unfair.

PAR. 9. The use by respondents of the aforesaid false, misleading, deceptive and unfair statements, representatives, acts or practices, as herein alleged, has had, and now has, the tendency and capacity

to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations, acts or practices were and are true and complete and into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged are to the prejudice and injury of the public, respondents' competitors, registered Patent Attorneys and Patent Agents and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

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

PAR. 12. In the further course and conduct of their business, respondents have failed to disclose to potential purchasers of their services the following material facts:

1. That The Raymond Lee Organization, Inc., as the assignee of an interest in its clients' [7] inventions, and in the absence of any agreement to the contrary, may as a joint owner of any resulting patents, make, use or sell the patented invention or license other persons or firms to make, use or sell the patented invention without obtaining the consent of and without accounting to respondents' clients.

2. That respondents are not registered patent attorneys or patent agents and are therefore precluded from preparing, filing or prosecuting patent applications before the United States Patent Office.

PAR. 13. Knowledge of such facts would be of importance to potential purchasers in their evaluation of the nature and value of the services offered by respondents. Thus, respondents have failed to disclose material facts, which if known to potential purchasers, would be likely to affect their consideration of whether or not to enter into a contract with respondents.

PAR. 14. Respondents' failure to disclose material facts, as herein alleged, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations, acts or practices were and are true and complete and into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein

Complaint

92 F.T.C.

alleged are to the prejudice and injury of the public, respondents' competitors, registered Patent Attorneys and Patent Agents and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

PAR. 16. The allegations of Paragraphs One through Fifteen above are incorporated by reference in Count III as if fully set forth verbatim. [8]

PAR. 17. In the further course and conduct of their business, respondents have utilized in various brochures, flyers and in other advertising materials, the names, photographs and quotations of public figures, including members of the United States Congress, a former Mayor of New York City, and other persons, without their knowledge, consent or authorization. In many such instances, general comments made by such persons in correspondence with respondents have been taken completely out of context in such fashion as to mislead prospective purchasers of respondents' services into the erroneous and mistaken belief that the persons so named, pictured or quoted have endorsed or utilized respondents' services or that they have used such services with complete satisfaction.

PAR. 18. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts or practices, as herein alleged, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations, acts or practices were and are true and complete and into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of respondents, as herein alleged are to the prejudice and injury of the public, respondents' competitors, registered Patent Attorneys and Patent Agents and public officials and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

PAR. 20. The allegations of Paragraphs One through Nineteen hereof are incorporated by reference in Count IV as if fully set forth verbatim. [9]

PAR. 21. Respondents' aforesaid unfair or deceptive acts or

practices have induced and are now inducing persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for services by respondents was and is of little or no value. Respondents have received said sums and have failed to offer to refund, and refuse to refund such money to such persons.

PAR. 22. The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice in or affecting commerce and a continuing violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE
LAW JUDGE

JULY 8, 1977

PRELIMINARY STATEMENT

On July 15, 1975, the Federal Trade Commission issued its complaint in this matter charging the respondents named therein with violation of Section 5 of the Federal Trade Commission Act. The respondents named in the complaint are Raymond Lee Organization, Inc., a corporation, Raymond Lee, an individual and an officer of Raymond Lee Organization, Inc., and Lawrence Peska, an individual and a former officer of Raymond Lee Organization, Inc. Respondents are alleged in the complaint to be engaged in the advertising, solicitation, offering for sale, sale and distribution of services to inventors and prospective inventors and to other persons with ideas for products in connection with the purported development, advice, and research for patent application, alleged introduction to industry and the purported marketing, sale or licensing of said inventions or ideas. In the course and conduct of their business, respondents, their employees, agents or representatives, perform preliminary patent searches, prepare patent applications on inventions for submission to the United States Patent and Trademark Office and to foreign patent offices, and compile and distribute to manufacturers informational brochures or notices concerning said inventions or ideas.

The complaint in Count I charges that respondents for the purpose of inducing the purchase of their services, have, by means of advertisements in various publications of general circulation, in other advertising and promotional materials, in letters and contracts mailed to potential clients, and in oral and written presentations, made statements and representations regarding respondents' business and professional qualifications and the nature and value of their services. By and through the statements and representations it

is alleged that respondents have represented, directly or indirectly that: [2]

(1) Respondent Raymond Lee is a registered patent attorney, a registered patent agent, or a licensed attorney;

(2) Respondents are qualified or recognized by the United States Patent and Trademark Office to prepare, file or prosecute applications for patents before said Office on behalf of their customers;

(3) Purchasers of respondents' services do not need to employ or pay extra fees for the services of outside patent counsel, or other outside specialists, after they have entered into a contract with respondents as respondents provide all the necessary services ranging from patent preparation and prosecution through ultimate marketing of the patented item;

(4) Respondents substantially develop or technically refine inventions or ideas for new products submitted to them by their customers;

(5) Respondents actively and successfully introduce, promote, and negotiate, on behalf of their customers, with manufacturers who have notified respondents of their interest in acquiring rights to inventions or ideas for new products in the area of the customers' inventions or ideas; [3]

(6) Respondents provide potential purchasers of their services with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and marketability of their ideas for a new product, on which said potential purchasers can rely prior to contracting with respondents; and

(7) Respondents act without unnecessary delay on behalf of their customers in an effort to gain patent protection for the customers' ideas or inventions.

In truth and in fact, it is alleged, the statements and representations were, and are, false, misleading, deceptive and unfair, and have the tendency and capacity to mislead and deceive members of the public into the purchase of respondents' products or services and the payment of respondents' fees.

Count II of the complaint alleges that respondents have failed to disclose to potential purchasers of their services the following material facts:

(1) That The Raymond Lee Organization, Inc., as the assignee of an interest in its clients' inventions, and in the absence of any agreement to the contrary, may as a joint owner of any resulting patents, make, use or sell the patented invention or license other

persons or firms to make, use or sell the patented invention without obtaining the consent of and without accounting to respondents' clients; and [4]

(2) That respondents are not registered patent attorneys or patent agents and are therefore precluded from preparing, filing or prosecuting patent applications before the United States Patent and Trademark Office.

Respondents' failure to disclose these material facts, it is alleged, has had the tendency and capacity to mislead and deceive members of the public into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

Count III of the complaint alleges that respondents have utilized in various brochures and in other advertising materials, the names, photographs and quotations of public figures, including members of the United States Congress, a former Mayor of New York City, and other persons, without such persons' knowledge, consent or authorization. In many such instances, general comments made by such persons in correspondence with respondents have been taken completely out of context in such fashion as to mislead prospective purchasers of respondents' services into the erroneous and mistaken belief that the persons so named, pictured or quoted have endorsed or utilized respondents' services or that they have used such services with complete satisfaction.

The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts or practices, it is alleged, has had the tendency and capacity to mislead and deceive members of the public into the purchase of respondents' services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

Count IV of the complaint alleges that respondents' unfair or deceptive acts or practices have induced persons to pay over to respondents substantial sums of money for contracts for services by respondents, which services were and are of little or no value to said persons, and respondents have failed to offer to refund, and refused to refund such money to such persons. The retention of such sums is alleged to be a continuing violation of Section 5 of the Federal Trade Commission Act. [5]

Respondents Raymond Lee Organization, Inc. (hereinafter "RLO") and Raymond Lee ("Lee") filed their answer to the complaint on October 7, 1975, and respondent Lawrence Peska (hereinafter "Peska") filed his answer on October 6, 1975.

In their answer, RLO and Lee admitted that the corporate respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and that its principal place of business is located at 230 Park Ave., New York, New York 10017. It was further admitted that respondent Lee is an individual and an officer of RLO.

Respondents RLO and Lee further admitted in their answer that individual respondent Lee is not a registered patent attorney, is not a registered patent agent and is not a licensed attorney, and that respondents RLO and Lee are not qualified or recognized by the United States Patent and Trademark Office to prepare, file or prosecute applications for patents before said Office. Respondents RLO and Lee denied all the other charges in the complaint.

Respondent Peska admitted in his answer that he is an individual and a former officer of corporate respondent RLO, and that he was Vice President of RLO from approximately September, 1964 through November, 1972. Respondent Peska denied in his answer all other charges in the complaint, including allegations that he formulated and controlled the acts and practices of RLO during the period of his employment.

In their answer respondents RLO and Lee stated "The alleged practices complained of were the responsibility of respondent Lawrence Peska, whose employment and relationship with RLO was terminated at or about which time the alleged practices complained of ceased" (RLO Ans., p. 4).

Four pretrial conferences were held as follows: November 14, 1975 (PH. Tr. 1-50); February 20, 1976 (PH. Tr. 51-82); April 12, 1976 (PH. Tr. 83-121); and August 5, 1976 (PH. Tr. 122-182). [6]

During the prehearing procedures and the actual trial, several orders of significance were issued. At the prehearing conference held April 12, 1976, the undersigned ruled that complaint counsel must establish a *prima facie* violation of Section 5 by Peska in his capacity as an officer of RLO prior to November 1972, before evidence relating to the activities of Peska and Lawrence Peska Associates, Inc.,¹ (hereinafter "LPA") subsequent to November 1972 would be admitted into evidence (PH. Tr. 96-102). This order, orally made at the prehearing conference, was later reiterated in a written order dated August 20, 1976.² On October 7, 1976, the undersigned made a determination, and a ruling on the record at the October 7th

¹ Lawrence Peska Associates, Inc. is wholly owned by Lawrence Peska (CX 2607B; Peska, Tr. 4780, 4931-33, 7093, 7175-76).

² Order (1) Denying Respondents' ("RLO") Motion for Reconsideration of Motion for Extension of Time or Alternatively for Permission to Appeal to Commission and (2) Certifying to the Commission RLO's Motion for Joinder of Another Party, August 20, 1976, p. 5.

hearing, that a *prima facie* showing of a violation of Section 5 had been made by complaint counsel as to Peska (Tr. 2580-2584, 2620-2631, 2697-2701). Thereafter, complaint counsel was permitted to introduce evidence relating to the conduct, acts and practices of Peska and LPA subsequent to November 1972, for the sole purpose of demonstrating the need for an order applicable to Peska.

By motion filed August 16, 1976, RLO requested that LPA be joined as a respondent in this proceeding. Upon certification, the Commission determined not to joint LPA as a respondent. (Order Denying Motion for Joinder of Another Party, September 13, 1976).

On November 15, 1976, RLO and Lee filed a motion to withdraw this matter from adjudication for the purpose of considering a consent settlement (Motion To Settle Administrative Proceeding, November 15, 1976). Complaint counsel did not execute the proposed consent agreement and opposed the motion to settle the proceeding. After certification of the motion, the Commission determined there was not a likelihood of settlement and denied the motion (Order Denying Respondents Motion To Withdraw Matter From Adjudication, December 14, 1976). [7]

On December 17, 1976, RLO and Lee filed a motion for a mistrial because of complaint counsel's communications with the media during the hearings. Peska submitted a statement supporting the motion for a mistrial. These motions were certified to the Commission and, by order dated April 7, 1977, the Commission denied the motion.

Trial of this matter commenced September 20, 1976 and was completed February 3, 1977. During this period forty (40) days of hearings were held and a total of eighty-six (86) witnesses were heard.³ Approximately fifteen hundred (1500) exhibits were received in evidence, consisting of several thousand pages, and nearly nine thousand (9,000) pages of transcript are in the record.

Witnesses who testified in this proceeding included an official of the United States Patent and Trademark Office, several public figures, registered patent attorneys, licensing experts, new product officials from industry, consumers, former and current employees of respondents, and the individual respondents. Every opportunity was extended to all parties in this proceeding to present all relevant and material evidence. Respondent Peska's counsel did not elect to participate in all the hearings herein (See Tr. 2578-2583, 2630, for example).

³ Complaint counsel called fifty-two witnesses, three of whom were recalled for testimony in rebuttal. Respondents called a total of thirty-four witnesses, one of whom was recalled in surrebuttal. Witnesses Peska and Dicks were called by both complaint counsel and respondents.

This proceeding is now before the undersigned for decision based upon the allegations of the complaint, the answers, pleadings, evidence of record, and the proposed findings of fact, conclusions and legal authority submitted by all parties. All proposed findings of fact, conclusions, and arguments not specifically adopted or accepted herein, are rejected as either inappropriate or immaterial. All motions not previously ruled upon, either specifically or as a consequence of this initial decision, are hereby denied. The undersigned, having considered the entire record, makes the following findings of fact, conclusions and issues the order set out at the end hereof. [8]

The findings of fact made herein include references to the principal supporting evidentiary items in the record. Such references are intended to serve as convenient guides to the testimony and exhibits supporting the findings of fact, but do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

References to the record are set forth in parentheses, and certain abbreviations, as hereinafter set forth, are used:

Tr. - Transcript, preceded by the name of the witness and followed by the page number.

CX - Commission's Exhibit, followed by number of exhibit being referenced.

RX - Respondent Lee and RLO's Exhibit, followed by number of exhibit being referenced.

RPX - Respondent Peska's Exhibit followed by number of exhibit being referenced.

RLO Ans.- Answer filed on behalf of respondents Lee and RLO.

Peska Ans. - Answer filed on behalf of respondent Peska.

CPF - Complaint Counsel's Proposed Findings.

RPF - Respondents Lee and RLO's Proposed Findings.

RRF - Respondents Lee and RLO's Reply to Complaint Counsel's Proposed Findings. [9]

FINDINGS OF FACT

I. THE RESPONDENTS AND THEIR BUSINESS

A. Identity of Respondents

1. Corporate respondent RLO is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 230 Park Ave., New York, New York 10017. RLO has affiliated offices located in Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Houston, Texas; Los Angeles and San Francisco, California; Montreal and Vancouver, Canada (RLO, Ans. § 1; Lee, Tr. 439, 445; CX 2805). Some of the RLO offices consisted of only telephone answering services (CX 2790-93, 2805; Lee, Tr. 471; Peska, Tr. 4824).

2. Corporate respondent RLO has affiliated corporations as follows:

Innovation Resources Corporation, 5455 Wilshire Boulevard, Los Angeles, California 90036, incorporated California 12/27/71;

International Technology Transfer, Ltd., Toronto-Dominion Centre, Toronto, Ontario M5H1A6, incorporated Ontario 12/13/71;

Napatco, Inc., 230 Park Ave., New York, New York 10017, incorporated New York 8/14/75;

Raymond Lee Organization of Colorado, Inc., 666 Sherman St., Denver, Colorado 80203, incorporated Colorado 12/4/72; [10]

Raymond Lee Organization of Texas, Inc., One Allen Center, Houston, Texas 77002, incorporated Texas 11/23/71;

Republic Industries, Inc., 230 Park Ave., New York, New York 10017, incorporated New York 3/5/68;

National Patent & Trademark Company, 898 National Press Building, Washington, D.C., incorporated Washington, D.C. 2/9/65 (CX 2606U, V, W).

Innovation Resources Corporation, International Technology Transfer, Ltd., Raymond Lee Organization of Colorado, Inc. and Raymond Lee Organization of Texas, Inc., are sales agents for RLO. Napatco, Inc. and National Patent Trademark Company offer patent

and trademark services for attorneys; and Republic Industries serves as an advertising agency for handling the advertising of RLO (CX 2606U, V and W; Lee, Tr. 431, 433-34).

3. Individual respondent Raymond Lee is now, and has been since its formation, President and sole stockholder and director of corporate respondent RLO (RLO Ans. § 1; Lee, Tr. 425, 427, 437; CX 2606). In his capacity as President, director and sole stockholder of RLO, Lee was instrumental in formulating, directing and controlling the acts and practices of RLO challenged in this proceeding (Lee, Tr. 444-45, 454-55, 462-65, 5020; Peska, Tr. 4791).

4. Individual respondent Lawrence Peska was, from approximately January 1967 through November 1972, Vice President of corporate respondent RLO and certain RLO subsidiaries and affiliates. From 1964 until RLO's incorporation in 1967, Peska was employed by Raymond Lee and National Patent and Trademark Company (which subsequently became an RLO affiliate corporation) (Peska Ans. ¶ 1, ¶ 3; Peska Affidavit attached to "Motion of Respondent Lawrence Peska for Summary Decision," dated October 31, 1975; CX 374B, 2601Q; Peska, Tr. 4780, 7100). The acts and practices instituted at RLO by Peska and challenged in this proceeding were not substantially changed after Peska's RLO employment terminated. [11] While an officer of RLO, Peska was instrumental in formulating, directing and controlling the acts and practices of RLO challenged in this proceeding (CX 377A-C, 2601Q, ¶ 15; Peska, Tr. 4829, 4846, 7100-01, 7302, 7306-07, 7667; Lee, Tr. 5079, 5085-88; Findings 221-225).

B. RLO's⁴ Business Operations

5. RLO has been, and is now, engaged in the business of providing patenting, development and marketing services to inventors and persons with ideas for new products (Lee, Tr. 431-34, 436; CX 2606U, V, W). From 1962 until 1967 Lee operated a sole proprietorship under the name Raymond Lee Organization, which provided services to inventors and persons with ideas for new products similar to those subsequently offered by RLO. RLO was incorporated in 1967 (Lee, Tr. 435-36).

6. RLO solicited clients through advertisements placed in newspapers, magazines, yellow pages of telephone directories, subway posters, brochures and flyers, and correspondence. Among the major newspapers and magazines utilized by RLO are *Popular Mechanics*,

⁴ "RLO" as used in subsequent findings detailing allegedly violative acts and practices occurring prior to November 1972 refers to respondents RLO, Lee and Peska collectively. "RLO" used in findings describing acts and practices occurring after November 1972 refers to respondents RLO and Lee.

Mechanics Illustrated, Popular Science, Field and Stream, TV Guide, New York Times, New York News, New York Post, Los Angeles Times, Dallas Times Herald, Chicago Tribune, and San Francisco Examiner (CX 2, 3, 7, 12, 13, 15, 20, 22, 24, 26-33; Lee, Tr. 549; Peska, Tr. 4893-94). Prior to 1972, some radio commercials were placed by RLO on local New York stations (Peska, Tr. 4892-93). RLO also conducted seminars in major U.S. cities for inventors for the purpose of acquainting inventors with the inventive process, including the development and marketing of new products, and soliciting clients for RLO (Lee Tr. 466-68). RLO's expenditures for advertising were substantial (CX 3035B, *in camera*).

7. In response to RLO advertisements, potential clients either telephoned an office of RLO or mailed in coupons asking for information, usually the free "Inventors Information Kit," which contained various RLO advertising and promotional materials and [12] a Record of Invention form. Some RLO clients from the New York City region initially contacted RLO by visiting the RLO office in New York City, or by visiting the office after a telephone call to RLO. Out-of-state clients were sent the Inventors Information Kit through the mail (Lee, Tr. 556; Coyle, Tr. 1544). Much of RLO's business is transacted through the mail and by telephone (Finding 24).

8. The Record of Invention form, when completed, constitutes a description of the potential client's invention or idea. A letter is included in the Inventors Information Kit urging an early return of the Record of Invention form to RLO (CX 116, 117, 119, 152, 174, 175). The Record of Invention form, when received at the RLO office, is forwarded to the Account Executive, who is essentially a salesman, responsible for the particular state in which the potential client resided (Coyle, Tr. 1545). If the Record of Invention form was not promptly returned, the Account Executive telephoned the potential client and urged a prompt response as "time is of the essence" (Duber, Tr. 4214). It was the function of the Account Executive to offer to the potential client the services of RLO in connection with his or her idea or invention as reflected on the Record of Invention form. CX 90 and 92 are completed Record of Invention forms.

9. RLO offered potential clients four different types of contracts: a Preliminary Product Research Agreement; a Development Contract; a Marketing Program; and a Canadian Patent and Marketing Program (Coyle, Tr. 1541-42). The usual sequence of events was:

- (1) the potential client contacted RLO in response to an advertisement;

(2) the potential client was mailed an Inventors Information Kit with a Record of Invention form enclosed; [13]

(3) the potential client completed and returned the Record of Invention form;

(4) the potential client was first offered the Preliminary Product Research Agreement which called for a search of the records of the United States Patent and Trademark Office to obtain a comparison with other developments in the area of the invention or idea and to provide information about some inventions which already had been developed in the field;

(5) after receipt of the results of the product research, the client was offered a development contract, which included the filing of a patent application and the offering of the invention or idea to industry as soon as patent pending status was obtained;

(6) concurrently with preparation of the United States patent application the client was offered the Canadian Patent and Marketing Program; and

(7) for potential clients who declined to enter into either the Preliminary Product Research Agreement or the development contract or who already had a patent status on the product or idea, a marketing program was offered which consisted of offering the product to industry. [14]

10. The Preliminary Product Research Agreement involves a search of prior patents in the United States Patent and Trademark Office ("Patent Office"). RLO's Preliminary Product Research Agreements are of three types and range in price from \$100 to \$300 (CX 2600B). A standard preliminary research service, in which a single researcher is assigned to research the records of prior patents in the Patent Office, is the usual contract which is sold to the clients and, in the past, this agreement cost the client \$100 (CX 189; Dicks, Tr. 855; Lee, Tr. 4987). The extended research agreement calls for two separate researchers independently searching the records of the Patent Office and presently costs the client \$195.00 (Lee, Tr. 4987; Dicks, Tr. 855). The expanded research agreement calls for three independent researchers and costs the client \$300 (Dicks, Tr. 855; Lee, Tr. 4987-91). The Preliminary Product Research Agreement is sent to the potential client accompanied by a letter from RLO "suggesting" that the preliminary product research be conducted "at once" (CX 96A, 131).

11. The researchers who conduct the preliminary patent searches are independent contractors located in Washington, D.C. and Virginia, and are paid by RLO approximately \$5.00 to \$8.00 on a per-

search basis, plus costs for copies, postage and photocopying (Dicks, Tr. 853; Lee, Tr. 4988; CX 2600). The method in which these researchers conduct a patent search for RLO is discussed at the time they are first retained by RLO rather than with reference to each search they conduct (Lee, Tr. 4992).

12. During 1974, approximately 3,819 persons entered into Preliminary Product Research Agreements with RLO, and in 1975 approximately 4,938 persons entered into such agreements (CX 2601D).

13. After the preliminary product research is completed, prior patents located as a result of this patent office search are forwarded to some clients along with a development contract in the form of a letter. Other clients are offered the development contract in person during a visit to RLO's offices. The letter contract enumerates the procedure to be followed by RLO for the development and introduction [15] of the client's idea or invention to industry (see CX 201, 204). The fee for the services outlined in the development contract has ranged from \$775 to \$2,000, plus an assignment by the client of a ten percent (10%) to thirty percent (30%) interest in the invention to RLO. The usual interest obtained is twenty percent (20%) (CX 100, 2600B). Account Executives follow through, usually by telephone, in an effort to insure that the development contract is executed by the client and returned to RLO.

14. The services to be rendered by RLO, as outlined in the development contract, include:

(a) RLO will first technically develop and/or refine the invention, if and to the extent necessary, for the preparation of suitable illustrations and description of the commercial features the client regards most important;

(b) RLO will retain a patent attorney on behalf of the joint venture (RLO twenty percent (20%) interest, client eighty percent (80%) interest) to prepare a patent application;

(c) After patent pending status is achieved, RLO will prepare and print a sales letter or prospectus to cover the general functions of the client's proposal;

(d) RLO will introduce the invention to industry by contacting a substantial number of prospective manufacturers to seek opportunities to negotiate for sale or licensing of the invention; [16]

(e) RLO will establish a campaign to publicize the invention for the purpose of stimulating commercial interest; and

(f) RLO will actively negotiate with manufacturers expressing an interest in acquiring rights to the invention.

The development contract further offers the client the right to repurchase RLO's interest in the invention (20%) for \$1,000 at any time within six months from the date of the agreement provided an arrangement for the sale or licensing of the invention has not been entered into or completed as of that time (CX 100).

15. The marketing program or Commission Sales Agreement is similar to the development contract except there is no patent application filed. Under the terms of this contract, RLO does not take an assignment of any interest in the invention. RLO's fee for simply introducing an invention to industry ranges from \$400 to \$600, plus 20% of any proceeds derived from the sale or licensing of the invention (CX 367E-F; Dicks, Tr. 825-26; CX 2600B).

16. A total of approximately 1,498 persons entered into development contracts with RLO in 1974. Approximately 1,585 entered into such contracts in 1975 (CX 2601E). The total number of clients who entered into marketing programs in 1974 was approximately 174; in 1975 the approximate number of clients who entered into this program was 160 (CX 2601E).

17. The Canadian Patent and Marketing Program is customarily offered to clients at or about the time the United States patent application is being prepared (CX 1218, 1543, 1544, 1555, 3084, 3087, Lean, Tr. 8227; Mullen Tr. 1834-35; Gorman, Tr. 2392-93). It is offered to clients on the rationale that it would enable the invention to be marked "U.S. FOREIGN PATENTS PENDING," which may be of added prestige and advantage when offering or publicizing the invention in the United States or Canada (Glass, Tr. 3870-3871; Peska, Tr. 4875-76; CX 3084). In recent years the cost of the Canadian program ranged from approximately \$500 to \$1,000 (CX 2600B). RLO also [17] retains a twenty percent (20%) interest in the Canadian patent (CX 2600B). The offer of the Canadian program was automatic to all clients who entered into a development contract, and approximately 10% to 15% of such clients purchased the Canadian program (Schwartz, Tr. 4006-07; Duber, Tr. 4222-23).

18. RLO also offered clients a Swiss patenting and marketing program, although the record evidence about this program is not extensive (Guerard, Tr. 3178-82; Peska, Tr. 4875-76).

19. To RLO's best knowledge, the total number of RLO clients who received United States patents on their inventions or ideas was 217 in 1974 and 271 in 1975 (CX 2601E). RLO clients have received a

total of approximately 700 patents since 1972 (Dicks, Tr. 7776-77; RX 659).

20. The total number of clients known to RLO whose ideas or inventions were sold or licensed to industry in 1974 where RLO was an active participant in negotiations for such sale, or where RLO had a financial interest in such idea or invention was zero; the total number of such clients in 1975 was two (CX 2601F-G). Individual respondent Peska testified that approximately "three to four" ideas or inventions of RLO clients were licensed to industry while he was employed there from 1963 through November 1972 (Peska, Tr. 4883-84). The total number of licensing agreements negotiated by RLO on behalf of its clients from 1968 through April 1976 is eight (8).⁵ Four of the eight licensing agreements negotiated by RLO covered the fireplace invention of Harold Hannebaum; one licensing agreement was negotiated on behalf of RLO client James Pecorella (Lee, Tr. 5117-19).

21. The total number of clients known to RLO whose total earnings from the sale or licensing of inventions or ideas resulting from marketing efforts by RLO, was zero in 1974. In 1975 one RLO client earned between \$1,000 and \$1,900 as a result of RLO's marketing efforts (CX 2601G-H).

22. RLO presently makes a disclosure to potential clients in the State of California pursuant to California State Law, Chapter 17 (commencing with Section 22370) to Division 8 of the [18] Business and Professions Code relating to invention development service contracts (CX 2599A-)). RLO's California disclosure document "Copyright 1976 Raymond Lee Organization, Inc." states:

... we have assisted approximately thirty thousand inventors, of which three directly involved us in transactions in which they received, as a result of our services, an amount of money in excess of the fee they paid to us. (CX 2600A)

⁵ CX 3037A-B, lists the eight licensing agreements RLO was able to locate in response to the subpoena served on them in this proceeding (Lee, Tr. 5117-19). These licensing agreements are dated August 1968 through April 1976. Complaint and respondents' counsel have both referred to nine licensing agreements but have not corrected CX 3037 to reflect this greater number. Therefore, relying on the official record, the correct number of licensing agreements entered by RLO on behalf of its clients is eight.

23. Total revenue received by RLO is:

1972 - \$1,396,264

1973 - \$1,241,822

1974 - \$1,115,354

1975 - Total revenue received by RLO for 1975 was received *in camera* (CX 2601, 3035; Lee, Tr. 5037).

C. Commerce

24. RLO, in the course and conduct of its business, has been and is engaged in interstate commerce. RLO makes substantial use of the United States mail by mailing brochures, contracts, drawings, correspondence, and other documents to its clients. RLO receives substantial mail from clients in the form of executed contracts, Record of Invention forms, payments for services, and other correspondence. RLO uses the mail to send requests for preliminary product searches and it receives the results of such searches in the mail. Additionally, long distance telephone calls are routinely placed by RLO Account Executives to clients throughout the entire United States. RLO mails prospectuses about clients' inventions to corporations and organizations throughout the United States. It publishes and mails to interested parties magazines containing information about clients' inventions. RLO places numerous advertisements in newspapers and magazines that circulate in interstate commerce. RLO also operates offices in several locations throughout the United States (Findings 1-23 *supra*). [19]

II. REPRESENTATIONS⁶ MADE BY RLO TO CLIENTS

A. Advertisements

25. Typical advertisements disseminated by RLO in newspapers, magazines and telephone directories invite the potential client to write or telephone for a free "Inventors Information Kit" and state that RLO will develop the inventor's idea, introduce it to industry and negotiate for a cash sale or royalty licensing. These advertisements also tell the reader about the Record of Invention form and about a brochure entitled "DIRECTORY of 500 CORPORATIONS Seeking New Products." Many of these ads refer to RLO as "the idea people" (CX 2-3, 7, 12-13, 15-16, 19-20, 22, 24-33, 40-42, 2588-92, 3108; Lee, Tr. 5101).

⁶ Specific representations challenged in this proceeding are dealt with in detail under separate sections, *infra*. Representations discussed in this section are intended to provide an overview of RLO's representations to potential clients.

26. Examples of advertisements disseminated by RLO state:

INVENTORS: Your ideas and inventions (patented: unpatented) expertly searched, developed for commercial appeal and cash/royalty sales to manufacturers by professional Invention Developer with excellent record of experience. (CX 2, 25)

If you have an idea for a new product or a way to make an old product better, contact us - "the idea people." If your invention is acceptable, we'll develop it for commercial appeal, negotiate for Cash Sale or Royalty Licensing. (CX 19)

[20] . . . professional invention developers with over a decade of experience, integrity and performance. YOUR INVENTIONS AND IDEAS DEVELOPED AND PREPARED FOR CASH/ROYALTY SALES. (CX 24)

DESIGN DRAWINGS PATENT
RESEARCH & MODELS
INVENTIONS
NEW PRODUCTS - NEW IDEAS
PATENTED - UNPATENTED
DEVELOPED & PREPARED for
COMMERCIAL APPEAL and SALES
MANUFACTURED - MARKETED

(CX 40; see also CX 41-42)

27. RLO advertisements frequently stress the qualifications of Raymond Lee as an "Invention Developer" and the founder of RLO (CX 2-3, 7, 24-25, 40) and include references to "success stories" of former RLO clients (CX 30, 32). Other advertisements point out that RLO has "offices throughout the U.S. and Canada" (CX 13, 15, 22, 26).

28. Representations contained in RLO advertisements successfully induced potential clients to contact RLO, either in person, by telephone or mail, and request further information as to RLO's services (Mullen, Tr. 1820).

B. The Inventors Information Kit

29. When a potential client either telephones, personally visits RLO offices or mails in a coupon from an RLO advertisement, he immediately is given or sent a free "Inventors Information Kit." This kit is a folio of various pieces of literature which describe the services rendered by RLO and includes a Record of Invention form on which the potential client may document his invention. The contents of the information kit has changed somewhat over the years (Lee, Tr. 557). If an out-of-state potential client requested such information, it would be mailed to him from RLO's [21] headquarters in New York City (Coyle, Tr. 1544). CX 2604A-K is a typical Inventors Information Kit (Lee, Tr. 560; see also CX 49A-D and CX 52A-F).

30. The outer cover of one RLO brochure included in the Inventors Information Kit states:

For many years, The Raymond Lee Organization has enjoyed the respect and esteem of the business community.

We are proud of our reputation and hope that you will soon join our long list of satisfied clients. (CX 47)

On the inside pages of this brochure, under the title "WORDS OF PRAISE FROM SOME OF OUR CLIENTS" photographs of 20 different persons are reproduced with quotations from said persons expressing their satisfaction with RLO's services. A minister and a nun are included among the photographs, as well as a photograph of Governor and Mrs. Kenneth M. Curtis of the State of Maine. The back panel of this brochure reproduces photographs and quotations of prominent public officials under the caption "A FEW WORDS FROM SOME PROMINENT NATIONAL LEADERS" (see Findings 169 to 184 for details of RLO's unauthorized use of public officials' names, photographs and quotations). An entire page of this brochure consists of a photograph and letter of praise from Judge Roy H. Adams, Bandera County, Texas (CX 47; see also CX 61). A letter used at one time to forward the Inventors Information Kit to prospective clients also included a quotation from Judge Adams' letter (CX 2898).

31. Brochures forwarded to potential clients in the Inventors Information Kit have emphasized the size and international character of RLO's business. For example, CX 68 and 2604, brochures entitled "NOW IT'S YOUR TURN to play the invention game!" state:

We're not just another invention development company. We're the largest organization of our kind with offices coast-to-coast in the United States and Canada.

[22] 32. The most detailed representations made to potential clients in the Inventors Information Kit of RLO's business and services are in the brochure entitled "THE CLIENT AND THE RAYMOND LEE ORGANIZATION" (CX 44). This brochure states:

Our objective, since the founding of The Raymond Lee Organization in 1962, has been personal attention to the needs of inventors and manufacturers. Helping to link these two groups is a staff of highly specialized knowledgeable personnel. . . . Your inquiry to any one of our offices is invited. It will be handled personally, promptly and in complete confidence. (CX 44C)

This brochure further represents:

You may contact an Account Executive. . . and immediately obtain information you require to initiate the development of a new product, idea or innovation. Seemingly

difficult questions and methods of procedure are instantly simplified and stripped of the confusion and complexity ordinarily surrounding them.

This efficiency, accuracy and simplicity requires knowledgeable, responsible, skillful people. We believe this characterizes the Raymond Lee Organization - the desire and ability to be of service. (CX 44E)

In amplifying on the expertise of RLO's staff, this brochure states:

They [Account Executives] are well-educated, highly-trained in their respective fields and have learned [23] their business well. . . . A large and able supporting organization has been built at Raymond Lee to serve your account executive. . . It consists of New Product and Invention Researchers, Commercial and Mechanical Draftsmen, Technical Writers, Public Relations and Publicity Representatives, Advertising Specialists, Market Analysts, Library and Industrial Directory Researchers, Licensing and Sales Negotiators and an extensive group of International Associates. . . the men and women of the Raymond Lee Organization, representing years of seasoned experience have a fresh outlook on the potentialities for tomorrow. (CX 44G)

33. A Record of Invention form is also enclosed in each Inventors Information Kit (CX 52). The inventor is asked to answer certain questions about his idea or invention and provide a written description and drawing thereof on the form. The Record of Invention form is filled out by a potential client prior to his execution of any contract or payment of any monies to RLO (Dicks, Tr. 775), and is to be mailed or brought in person to RLO. Said form contains the following on the front page:

INVENTOR'S STATEMENT AND AUTHORIZATION - I (We) hereby declare that I am (we are) over 21 years of age and declare to all whom it may concern, that the invention described in this document was invented by me (us), and that The RAYMOND LEE ORGANIZATION is hereby authorized to examine the invention described herein for the purpose of receiving its comments and suggestions for the international development and introduction of this invention to industry. (CX 52A).

34. Letters which accompany the Record of Invention form reiterate RLO's claimed expertise with statements such as: [24]

. . . As we are one of the largest companies in this field, our clients have the benefit of dealing directly with an internationally known organization that can provide those services needed for the effective development and sales promotion of their inventions.

You may be assured of the professional skill and integrity of our long established organization and those experts we retain as needed for special services, as well as the careful manner in which your invention will be treated. (CX 50)

. . . Please note the respected credentials of our organization which are among the highest in this industry. They are your assurance of our integrity, experience, and ability to serve you well. (CX 51)

35. In instances where the Record of Invention form is not

returned by a prospective client, RLO uses a CALL-TELEGRAM to spur return of the form. The form states, in part:

... Please give me an immediate call-collect. I have three general questions that will help *you* determine the merit of your idea. (CX 2813A)

36. Many RLO clients had little education (Hill, Tr. 2115), and quite a few barely spoke English. A former RLO Account Executive testified:

Q. Did you have any reason to believe anyone you dealt with had any difficulty reading the (RLO) brochures?

A. Quite a few people. [25]

Q. Did they ask you questions about it?

A. I dealt with many people who didn't have much of an education. Quite a few people who barely spoke English. (Schwartz, Tr. 4079-80; see also Bellavista, Tr. 2007)

37. The record is replete with testimony of RLO clients describing the highly favorable impressions they received from the Inventors Information Kit. Clients were very impressed with the documents which describe the background of Lee, the international aspect of RLO, the experience and expertise of RLO, the testimonials of prominent public figures, industrial organizations, governmental agencies, satisfied clients and with the success stories of inventors who have been assisted by RLO (Mullen Tr. 1887-88, 1890; Bellavista, Tr. 2010; Salemi, Tr. 2444; Lart, Tr. 2506; Brody, Tr. 3086; Guerard, Tr. 3152-53; Bucko, Tr. 4358-59, 4388-89; Hawriluk, Tr. 5752-53; Lean, Tr. 8188-89). The entire course of dealing between many RLO clients and RLO is through the mail and over the telephone (Brody, Tr. 3091-92). These brochures and letters therefore have special significance with such clients.

C. During Office Visits

38. Potential clients who visited RLO's offices received the Inventor Information Kit at the time of the visit. One client, Myron S. Shepard, testified regarding favorable impressions he received from the physical surroundings of RLO's offices as follows:

... I waited in the waiting room for awhile. Incidentally, before I even entered I was impressed because on the right-hand door, as I recall it, there was a list of five or six offices, branch offices in other cities. In the waiting room I saw, which was very nicely decorated, I saw testimonials, photographs of, I recall one in particular of what purported to be [26] Mr. Lee with former Mayor Lindsay giving him a citation, an award, something. I don't know. On the table in the waiting room there were many brochures, pamphlets of The Raymond Lee Organization with testimonials from

various people as to the services, satisfactory services that Lee had performed for them. . . . (Shephard, Tr. 1911; see also Bellavista, Tr. 2009; Hill, Tr. 2166-67)

D. The Preliminary Product Research

39. An RLO Account Executive receives the Record of Invention form when it is returned by a potential client. If the potential client is located out-of-town, a letter is mailed to the potential client suggesting that RLO be permitted to have preliminary product research performed prior to the client receiving RLO's further recommendations for the development of the invention (CX 96). If the potential client is located in the New York area, an Account Executive telephones the potential client and requests he visit RLO's office to discuss the invention (Traube, Tr. 5149).

40. One former RLO Account Executive testified that in selling the preliminary product research he used the following approach:

. . . Good morning, Mr. Jones, this is Bill Coyle from the Raymond Lee Organization. How are you today? Look I have your record of invention form in front of me. It looks like a very interesting idea. How did you happen to think of this? Then I would get an answer back. "Well, look, have you checked the market? Have you looked around in the various stores in your area? Have you seen anything similar to it?" Normally I would get a no. I would say, "Okay." Well, the first step in putting anything on the market is to obtain a search of the U.S. Patent Office. Now, that search would cost you \$100. Now, I have a search group [27] of papers going out in approximately five days. What I will do is I will send you copies of the search form and you sign them, send them back to me together with \$100 and I'll put that search in. And at the end of about six weeks you'll get the results of the search. Can I send those papers out to you right now, Mr. Jones? (Coyle, Tr. 1529-30)

41. The letter recommending the initiation of a preliminary patent search states that, having examined the inventor's Record of Invention form, RLO now has "an understanding of the objects and purposes of your invention" and suggests a patent search before any further steps to develop, manufacture, sell or license the invention are taken. Potential clients are informed that if a preliminary search is authorized they will receive the confidential results of the research including copies of the patents found as the result of such search as well as RLO's recommendations for development of the invention (CX 96).

E. The Development Contract

42. After the "preliminary product research" is completed, a "development contract" in the form of a letter is forwarded to the potential client along with copies of the prior patents located as the

result of the search (CX 100A-B). Introductory paragraphs of this letter state:

...to obtain serious consideration by companies in the field and to maximize the opportunity for success a well-planned program should be initiated.

...Since we are Invention Developers, we have assembled a staff and retain, as needed, qualified independent contractors, for carrying out many of the important steps for introducing an invention to industry. (CX 100A) [28]

43. After setting forth the steps RLO will undertake to develop the potential client's invention, RLO's letter contract states:

Your invention will be developed as set forth and outlined above, and we will proceed immediately upon receipt of your approval of these arrangements. Therefore, to have your invention processed at an early date, please promptly return the enclosed reference copies and a copy of this letter, which you are requested to sign below.

**III. RLO REPRESENTS, BUT DOES NOT, ACTIVELY AND
SUCCESSFULLY INTRODUCE, PROMOTE, AND NEGOTIATE WITH
MANUFACTURERS REGARDING CLIENT'S IDEAS OR INVENTIONS.**

44. Numerous brochures sent to potential RLO clients represent that RLO has special access to corporations who are actively seeking new products through RLO (CX 44, 45, 46, 67, 75, 76, 78, 80, 1082). Such representations are repeated throughout the brochure entitled "THE CLIENT AND THE RAYMOND LEE ORGANIZATION" which lists branch offices in several areas and states that:

...in a few short years this company has become known as one of the first and foremost in the field of International New Product Technology.⁷ . . .

...Each year we are able to handle inquiries from thousands of clients and prospective clients seeking one or more of our services, from Preliminary Product Research, Technical Development and programs that relate to the introduction of their products to industry, to [29] actively seeking new products on behalf of major corporations and assisting in the manufacture and marketing of new product concepts. (CX 44E)

Said brochure further states:

...The Raymond Lee Organization maintains its executive offices among the world's leading and most successful corporations. In modern, well-equipped and efficiently managed offices, the executives provide the services required by their clients throughout the world. . . . (CX 44F)

Under the heading "INTRODUCTIONS TO INDUSTRY" said brochure states:

⁷ In a letter, signed by Peska, sent to clients making initial inquiry of RLO, the client was told in 1970 that RLO [founded in 1962] was "internationally known," "long established," "steeped in the tradition of providing valuable service," and "has a history of experience and achievement." (CX 152)

We maintain continuous contact with leading companies in the U.S. and abroad, to which new product ideas are submitted on a regular basis. Thus, our Organization is in a position to introduce virtually any new product idea or concept to selected companies in its particular field for review and consideration. (CX 44-0)

Finally, under the heading "SERVICES TO MANAGEMENT CONSULTANTS, CORPORATIONS AND INSTITUTIONS" said brochure states:

New product services have made our name famous, and the financial strength and experience we developed, to serve both novice and professional inventors, have helped us to widen our areas of activity. . . . Our Company has wide experience in searching out new-product concepts. . . . We know what it takes to market a product. The research, development, marketing and distribution aspects are interrelated. The expertise gained during our years in this [30] dynamic and burgeoning industry helps us to select new product concepts of interest to progressive companies. We can supplement our clients' search for new product ideas, as well as enhance their existing product capabilities.

Our extensive contacts and our access to private and public sources of new product technology are available to you. We will welcome your inquiries and put skilled men to work in serving your new product needs. (CX 44Q; see also CX 45A-T, 46A-5, 260H).

It would be difficult to imagine a more glowing report of an organization's experience, knowledge, ability, efficiency, capability, integrity, and desire to serve inventors and major corporations seeking new products worldwide than that contained in this brochure.

45. CX 67, an RLO brochure entitled "IDEAS GO TO MARKET . . . THE RLO WAY," contains the photograph of Lee with his signed statement as President of RLO which states:

. . . Industry is now engaged in an international battle for survival. This is why manufacturers throughout the world are seeking new product ideas and inventions which will expand their product lines and areas of distribution.

The Raymond Lee Organization is proud of its participation in the introduction of new product opportunities to manufacturers, and extends to you our very best wishes for your success in the introduction of your invention to industry.

46. RLO's Inventors Information Kit also contained a brochure entitled "500 LEADING CORPORATIONS SEEKING NEW PRODUCTS THROUGH." This statement is in juxtaposition to "The RAYMOND LEE ORGANIZATION, INC.," so that the [31] brochure can be read as stating that 500 leading corporations are seeking new products *through* RLO (CX 78). Other versions of this brochure have eliminated the word "through" (CX 2604F). The brochure also states:

The Raymond Lee Organization has compiled this report to assist industry in its quest for new products and to establish a marketplace for the introduction of inventive and innovative concepts. This is only a partial listing of the many prominent manufactur-

ers who have specifically expressed to The Raymond Lee Organization their desire to consider products in their fields of interest. (CX 78B, 81, 2604)

47. CX 75 and 76 are brochures which set forth complete letters from corporations throughout the United States expressing interest in new products. Individual respondent Peska testified that the names of the corporations appearing in these brochures were obtained by contacting manufacturers and asking them if they were interested in receiving materials from RLO; corporations which responded affirmatively had their names and quotations from such correspondence placed in RLO's brochures (Tr. 4914-15; CX 75, 78, 2604). Many of the letters make it obvious RLO first contacted the corporations offering to provide information to the corporations.

48. CX 80, a brochure entitled "THE RAYMOND LEE ORGANIZATION Internationally Known," contains letters from corporations, clients, and copies of governmental and organizational citations. The cover page of this brochure shows letterheads of various corporations and organizations, including General Motors, Indiana State Bar Association, Massachusetts Institute of Technology, British Consulate General, The Austrian Trade Delegate in the United States, Consulate General of Switzerland, and the Federal Trade Commission. Respondent Lee testified that this montage of letterheads was the result of a compilation of letterheads from correspondence RLO had received and was used to "graphically illustrate the fact that we [RLO] were known internationally amongst various [32] types of organizations of international concept and to illustrate the statement in the copy" (Tr. 5097-99). Mr. Lee further testified that he did not believe RLO had ever licensed a client's invention to any of the organizations whose letterheads were reproduced in this brochure (Tr. 5099).

49. Inclusion of client success stories in RLO's promotional literature helped to reinforce potential client's impressions that RLO would successfully introduce and promote their inventions (Coburn, Tr. 5514). CX 51, a letter accompanying the Inventors Information Kit, states that RLO's credentials are "among the highest in this industry" and are your "assurance of our integrity, experience and ability to serve you well." This letter further states that the brochures included in the kit:

... describe some of the inventions with which we have been involved and how we participated in bringing them from an idea to reality.

50. In one RLO brochure, CX 67, under the headline "FIREPLACE INVENTION BRINGS FAME AND FORTUNE TO IDAHO INVENTOR," a photograph of RLO client Harold Hannebaum receiving a royalty

check is reproduced. The brochure contains a quote from Mr. Hannebaum stating:

Dear Mr. Lee:

Much of our success must be credited to your organization which, as a participant in this program, was so careful and precise in the development and processing of this invention. . . . (CX 67B)

51. CX 67 also contains the photograph of RLO client James Pecorella receiving a royalty check, and the reprint of a letter to RLO signed by Mr. Pecorella in which he states:

. . . The Agreement which you negotiated with Technifloor Products, Inc. is very favorable and guarantees to me a substantial income based upon a minimum annual royalty of \$7500. (CX 67F; see also CX 66)

[33] Mr. Pecorella did not earn a minimum annual royalty of \$7500 and did not compose the depicted letter, although he approved its contents (Pecorella, Tr. 5642, 5645-46, 5651-53; CX 2604B). Further, the company which took a license under Mr. Pecorella's invention was actually contacted by Mr. Pecorella, not RLO (Pecorella, Tr. 5657).

52. CX 64, a brochure which gives several case histories of clients RLO helped to achieve success, contains a two-page story headlined "RAYMOND LEE ORGANIZATION CLIENT RECEIVES \$4,000,000 IN STOCK SALE TO ESQUIRE. . ." A careful reading of the two page story reveals that Globe Book Company (the RLO client) received \$4,000,000 in Esquire, Inc. stock as a result of Esquire's acquisition of Globe. The brochure does not disclose how obtaining a patent on "programmed reading" by Globe with RLO's assistance relates to the \$4,000,000 merger transaction, but the reader is left with the obvious impression that the RLO services are responsible for the \$4,000,000 which Globe realized in the merger. The record reflects that RLO did not negotiate a license or sale of an invention for Globe.

53. Account Executives were anxious to sell the services of RLO because a substantial part of their income was based on commissions they received on sales of RLO services. Account Executives testified that more than fifty percent (50%) of their income at RLO was based on such sales (Duber, Tr. 4198-99; Pion, Tr. 8494; CX 639, 647, 655). On occasion, RLO conducted sales contests where Account Executives received bonuses or extra commission on sales during the contest periods (Coyle, Tr. 1519; Duber, Tr. 4198; RX 647). At sales meetings Account Executives' conversion rates were discussed — the percentage arrived at by comparing number of sales to number of clients contacted (Duber, Tr. 4257-60).

54. Former Account Executives confirmed that in order to make sales the impression of success was deliberately created: [34]

* * * * *

A. Basically there was always inferences of a hint of a mint. Otherwise we would never be able to sell the programs.

Q. A hint of mint?

A. A hint of mint.

Q. What does that mean?

A. That means to me that we had to infer that money would be made if they would allow us to handle their inventions. (Duber, Tr. 4293-94)

* * * * *

... You have to tell them there is an opportunity. They are not going to pay \$1,500. (Coyle, Tr. 1617)

* * * * *

I don't think any inventor would proceed if he didn't think that he had a chance of selling it, in his own mind. (Pion, Tr. 8498)

* * * * *

I would do everything I could to get the sale [of preliminary patent search] at least within whatever bounds I thought was ethical. . . . If they would say to me, . . . "There's no guarantee that I am going to make money out of this," I would say something like, "Well, you'll never know unless you try." If they would [35] say to me, "Well, money is very hard to come by," I would say something like, "Well, you are making an investment." I remember I used that quite a bit. I talked of this as an investment. "You are making an investment in your future. There is no guarantee it will pay off, but it certainly is an investment. It's not like you are spending the money away for a product and throwing your money out." It was those kinds of things. (Switkin, Tr. 1781-82)

55. Gerald Pion, an Account Executive currently employed by RLO, testified that he also discussed success stories of previous RLO clients with prospective clients "[o]nce in a while" (Tr. 6938).

56. Clients testified that they had been given no *guarantee* that their idea or inventions would be patented or successfully marketed, or that the client would make money (Gorman, Tr. 2412; Salemi, Tr. 2482; Brody, Tr. 3140-41; Guerard, Tr. 3214-15). Former Account Executives also generally confirmed that they gave no guarantees or assurances the idea or invention would be successful (Coyle, Tr. 1562-63; Glass, Tr. 3919-21; Schwartz, Tr. 4085-86; Duber, Tr. 4292). Most of this testimony, however, was elicited by questions specifical-

ly directed at whether guarantees, or assurances, or promises were given to clients (Coyle, Tr. 1528, 1623; Gorman, Tr. 2412; Salemi, Tr. 2482; Brody, Tr. 3140-41; Guerard, Tr. 3214-15; Schwartz, Tr. 4085-86; Duber, Tr. 4292-93; Bucko, Tr. 4398; Sarno, Tr. 5348; Lean, Tr. 8264).

57. While no guarantees were extended, clients of RLO were given the clear impression they would probably be successful: [36]

* * * * *

A. A guarantee? No. An implication, yes. (Salemi, Tr. 2482).

* * * * *

Q. At any time did anyone at (RLO) make any promise to you that you would be able to market or license or sell your invention?

A. I can only say that they inferred that through their development and marketing techniques that it was highly probable that my invention would be patented and marketed. (Giaquinto, Tr. 4575-76)

* * * * *

Q. Did anyone at The Raymond Lee Organization at any time give you a guarantee that you would get a patent?

A. No, I didn't receive a guarantee.

Q. Did anyone ever give you any kind of a guarantee you would be able to market your invention?

A. No guarantees.

Q. Did they ever give you any guarantee you would be able to make money from your device?

A. No guarantees, but I thought I would get a patent. I thought they would market my invention and I thought I would be rich by now.

Q. Did anyone at The Raymond Lee Organization tell you you would be rich by now?

A. No. [37]

Q. Did anyone at The Raymond Lee Organization tell you you would have a patent by now?

A. No. This was the impression they gave me, though.

Q. Just an impression?

A. From these letters, yes, from these phone calls. I didn't know any other way to go about marketing, developing, getting a patent for my invention. I saw this. This company took care of everything it seemed. I thought, "Why not go with that?" (Brody, Tr. 3140-41)

57. RLO, through its advertisements, brochures, contracts, letters, telephone conversations, face-to-face meetings - through its entire course of dealing with clients until all contracts have been executed, has represented, directly, indirectly, and by implication, that RLO actively and successfully introduces and promotes its clients' ideas or inventions to industry.

58. Contrary to its representations, RLO has not actively and successfully introduced and promoted its clients' ideas or inventions to industry. From August 1968 to April 1976 only eight licensing agreements were negotiated with industry by RLO on behalf of its clients (CX 3037; Lee, Tr. 5119). Of these eight licensing agreements, four were for the same invention, the Royal Carosel fireplace invented by Harold Hannebaum (CX 3037). In contrast to RLO's represented success on behalf of its clients, only three of RLO's approximately thirty thousand clients have received, as a result of RLO's services, "an amount of money in excess of the fee they paid" to RLO (CX 2600). [38]

IV. RLO REPRESENTS IT WILL, BUT DOES NOT, PROVIDE POTENTIAL
CLIENTS WITH A FAIR, ADEQUATE AND THOROUGH APPRAISAL
OF THEIR IDEAS OR INVENTIONS.

A. Representations That Appraisal Will or Has Been
Made.

59. The folio cover to the Inventors Information Kit states under the heading "Developing Your Idea" that an inventor "may need a marketing specialist to tell you what your proposed product's chances are in the competitive marketplace." The RLO Account Executive, "well educated and highly trained and now a full-time career man in the new-product technology field," will "study your idea honestly and sympathetically without cost or obligation and, depending upon its status, suggest a procedure for commencing its development or commercialization" (CX 49, 2604J).

Brochures included in the Inventors Information Kit and RLO advertisements also indicate RLO will offer the client product evaluation. CX 19, an advertisement in the *New York Times*, December 30, 1973, states:

... If your invention is acceptable, we'll develop it for commercial appeal, negotiate for Cash Sale or Royalty Licensing.

CX 44Q and 2604H brochures in the inventors kit, state:

... The expertise gained during our years in this dynamic and burgeoning industry helps us to select new product concepts of interest to progressive companies.

60. CX 52, the Record of Invention form, states that RLO is being authorized to examine the potential client's invention "for the purpose of receiving its comments and suggestions for the international development and introduction of this invention to [39] industry." A letter accompanying this form states that, after review of the Record of Invention form, RLO will submit a report "with a suggested procedure for commencing the development of your invention" (CX 50). Another letter, CX 51, which RLO sent to potential clients, states that a completed Record of Invention form:

... enables us to examine your invention and, without cost or obligation, explain how we would like to proceed. If we cannot accept your invention or idea, we will promptly inform you of our reason.

61. A letter is sent to RLO's potential clients acknowledging receipt of the Record of Invention form and stating that RLO has "*completed our examination of it*" (emphasis supplied). The letter then states to the potential client that:

... we would like to suggest that you have the benefit of a comparison with other developments which have been made in this field before you take further steps to develop your invention, to manufacture it or to offer it for sale or licensing to prospective manufacturers.

If you will, therefore, permit us to have preliminary product research conducted at this time, for the relatively modest sum of \$100.00, it will be possible to accomplish this. Copies of United States Patents found during this investigation which we will send you will also provide valuable information about some of the inventions which have already been developed in this field. [40]

Within a few weeks after receiving your instructions and remittance concerning this matter, you will receive the confidential results of our findings, including the copies of the reference material located, our recommendations for the development of your invention, and arrangements on which we would accept a participating interest in this program. You should, therefore, have this investigation made at once to avoid unnecessary delay in any future development of your invention.

I know that you are already aware of the importance of time in this matter, so I will look forward to receiving your early instructions. (CX 96A)

This letter goes out to the client along with RLO's Preliminary Product Research Agreement and prior to the execution of any agreement between the client and RLO (Dicks, Tr. 840-42).

62. The Preliminary Product Research Agreement states:

... Without any expectations of a prior or subsequent evaluation of these proposals by the RAYMOND LEE ORGANIZATION, INC. or its representatives I am requesting this research for the purpose of providing me with the benefit of personally comparing and evaluating my proposal/proposals with respect to such related U.S. patented inventions as may be located through such research; ... (CX 201)

This statement is followed by a statement that: [41]

. . . I understand this [Preliminary Product Research Agreement] includes:

1. Examination of proposal/proposals;

Thereafter the following statements appear in the agreement:

. . . These copies and the enumerations of typical procedures of the RAYMOND LEE ORGANIZATION, INC. for the development and introduction of a proposal to industry are for my personal knowledge and evaluation, and shall not be construed as a recommendation based upon an evaluation of my proposal/proposals by the RAYMOND LEE ORGANIZATION, INC. for me to adopt such procedures.

A further statement is included that:

. . . no guarantees could ever be made as to the non-existence of a particular patent, nor should the results be construed as a legal opinion regarding the patentability of the invention. . . (CX 201)

63. In contrast to written statements that no evaluation was made prior to suggesting a preliminary patent search, former Account Executive Paul Duber told prospective clients, in selling Preliminary Product Research Agreements, that RLO thought their ideas were "feasible and marketable."

* * * * *

Q. All right. After you received the record of invention form of a client by mail what did you tell such a client about The Raymond Lee Organization's services?

A. Now, I would tell them that we received the record of invention form and that our people think [42] that the idea is feasible and marketable and that we think that we should do some investigation and find out whether we have an opportunity for a patent.

* * * * *

. . . In order to do that we would have to send somebody to Washington to check the Patent Office files to see what already existed. . . (Duber, Tr. 4202)

64. Another former Account Executive testified:

JUDGE BARNES: Just what did you say to the client when he came in?

A. I told him I have reviewed the idea and that the company was interested in having a patent search done to see if there was anything that was similar to his particular idea.

* * * * *

Q. What was the basis for this statement?

A. It was the normal procedure in the company. This was the instructed procedure in the company.

Q. Well, did somebody in the company communicate to you that this was an idea that the prospect should go ahead with?

A. Every record of invention form that I received on my desk, my job was to call the inventor, invite him in and to explain the search to him or a marketing program based on what was on that, what he filled in on the back of the record form. (Traube, Tr. 5153) [43]

* * * * *

Q. Did you ever tell a prospect that the company or you were not interested in his idea or invention?

A. No, sir, I did not. (Traube, Tr. 5154)

65. The development contract makes no direct or specific evaluation as to the patentability or merit and marketability of the client's idea or invention, but states as follows:

You will be pleased to know that we have completed our preliminary product research regarding your invention, and we enclose herewith references which we believe will aid you in your evaluation of it. (CX 100A, 367B-C; Dicks, Tr. 825, 846)

However, the form contract also states:

. . . Accordingly, we would, in return for an assignment of a twenty percent (20%) minority interest in the invention plus a fee of \$775.00, proceed with the immediate development of your invention. . . (CX 100A).

Thus, the development contract does clearly indicate that RLO has evaluated the idea, is desirous of taking a twenty percent (20%) interest in the invention, and is ready to proceed immediately. The client is requested to give the matter "your immediate attention" (CX 100B).

66. Former Account Executive William E. Coyle described a typical sales presentation that he would make to encourage a potential client to sign the development proposal, as follows: [44]

* * * * *

Mr. Jones, you've had a chance to go over those forms that I sent you so far as the patents are concerned and now you've had a chance to review the marketing proposal that we made. Now, that would run about \$1,500. . . whatever it may be. I think we ought to go ahead with this thing, because the more time that you spend thinking about it the more chance there is for someone to come into the Patent Office and get the same idea in ahead of yours. Now, why don't you send me your check, . . . either that or send me a deposit so that we can start to work on it.

Q. Now, if this prospective client said, "Well Mr. Coyle, you told me 'I think you

Initial Decision

92 F.T.C.

should go ahead with this thing.' On what basis were you making this recommendation to me?"

A. On the basis of the fact that the Patent Office had been searched. There was nothing identical, according to the patents that we got, and under those circumstances we felt it was a marketable idea and we could go ahead with it.

JUDGE BARNES: You would tell him that the patent search had not uncovered anything identical?

THE WITNESS: Well, he had the patents right in his own hand for review. [45]

JUDGE BARNES: I asked you would you tell him that? You just said you did.

THE WITNESS: Yes, I would tell him that. (Tr. 1528-29)

67. Mr. Coyle further testified that he was instructed to tell prospective clients that their idea or invention was marketable and that:

... Otherwise we wouldn't have sent them the marketing proposal. We cannot guarantee that we are going to market it, but it appears to be something that we think we can sell. Otherwise we would not have sent you that marketing proposal, because we are going to try to make our money on the 20 percent. And if we don't market it, we're not going to get anything. 20 percent of nothing is nothing. (Tr. 1562-63)

68. Mr. Coyle also testified:

... Look, this is a marketing proposal and I cannot guarantee that we're going to be able to sell this product to a manufacturer or get a royalty contract, something along those lines. But it does appear that we have a good chance that it is marketable. But I can't guarantee.

Q. You told the clients that it appears to you there was a good chance?

A. Yes.

Q. Did Mr. Si Friedman tell you to tell clients in response to such a question that Raymond Lee Organization thought there was a good chance for marketing? [46]

A. Yes. (Tr. 1616)

* * * * *

JUDGE BARNES: Mr. Coyle, as a salesman you couldn't sell this proposal if you told them there was not a good chance, could you?

THE WITNESS: Of course not. You have to tell them there is an opportunity. They are not going to pay \$1,500. (Tr. 1617)

69. Mr. Coyle also testified:

* * * * *

Q. Were you encouraged to sell searches to everyone?

489

Initial Decision

A. Yes.

Q. Were you encouraged to sell development proposals to everyone?

A. Yes.

Q. Even if you thought the idea was ridiculous?

A. Yes. (Tr. 1527)

70. Former Account Executive Stanley Winter testified that if a potential client asked him his opinion as to the patentability of his idea or invention he would suggest that a preliminary patentability search be conducted. After the search was conducted and the prior patents were presented to the client, Mr. Winter would say that the decision has to be made by the client:

Q. Did any client ever ask you for your opinion as to patentability after the search results were obtained?

A. Certainly, yes. [47]

Q. What did you say to him?

A. I could not give an opinion. I would say to the client that the decision. . . was up to the client.

Q. Did you refer the client at that point in time to any patent lawyer?

A. Absolutely not.

Q. Did you refer this client to any patent agent?

A. No. (Winter, Tr. 1703-04)

71. Former Account Executive Paul Duber described the procedure he followed after the preliminary patent search had been completed:

* * * * *

Q. And when you receive these copies of prior patents what did you do?

A. I called the client.

Q. What did you tell the client?

A. Told him that everything looks 'go,' and it looked like it was worthwhile going ahead. I told him that we were ready to start our development program if they were, that we think we have opportunities in all areas and we thought it would be a good idea. . .

* * * * *

Initial Decision

92 F.T.C.

A. . . the normal question was that what did our people think? Did we think it was patentable, did we think the idea was still a good one?

Q. What did you say? [48]

A. Yes.

Q. If they asked you, "Is my idea marketable," you said yes?

A. Yes. (Duber, Tr. 4203-04)

72. Although the record is clear that Account Executives never guaranteed that clients would obtain patents, or market their invention, or make money on their invention, the inferences conveyed to clients were that they would make money on their ideas. Mr. Duber testified as follows on cross-examination:

Q. Now, Mr. Duber, while you were a Raymond Lee employee did you ever tell a client that they would be guaranteed a patent?

A. No.

Q. Did you ever make any of those promises or guarantees to a client with respect to the marketability of their invention?

A. No guarantees, no.

Q. Any promises that their invention would be marketed?

A. No.

Q. Did you make any promises to them they would be able to make money from their invention?

A. No. Could you qualify that?

* * * * *

JUDGE BARNES: Did he ever tell a client he could make money on an invention? [49]

THE WITNESS: Not directly.

Q. Did you ever hear?

A. Basically there was always inferences of a hint of a mint. [an inference that money would be made] Otherwise we would never be able to sell the programs. (Tr. 4292-93)

73. Former Account Executive Stanley Schwartz testified that he would mention to clients the success RLO had in marketing the carousel fireplace, and ". . . we would discuss the idea that we felt that their product was potentially marketable and sort of left it up in the air that way" (Schwartz, Tr. 4027-39).

74. RLO clients testified as to the representations made by Account Executives. A very recent client, Jeffrey Lean (contacted RLO in February 1975), testified that after he received the copies of patents located in the preliminary product research, he wanted a second opinion so he visited RLO's offices (Lean, Tr. 8194). The Account Executive he spoke with, Mr. Pion, stated that he believed the invention, a shower curtain holder, to be patentable and a marketable item (Lean, Tr. 8194-96). Mr. Lean testified:

... but we both [client and account executive] agreed yes, we have a good thing here. Otherwise, I would have never followed through on this thing. I am not qualified to make decisions to continue with patent applications, that's why I hired somebody else. ... (Tr. 8265)

75. Mrs. Mullen, whose invention was a marketing cart, testified that her Account Executive thought the invention was "a very marketable product" (Mullen, Tr. 1821, 1832, 1837, 1870-71). Mrs. Mullen further testified that: [50]

* * * * *

... [I]t was on the basis of what she said that to me I agreed to go ahead. (Tr. 1872; see also Tr. 1873)

75. Mr. Bellavista received a letter stating that the RLO Engineering Department had completed its examination of his Record of Invention, and suggested a meeting for further discussions (CX 742). At the meeting the Account Executive told him it was a "good invention" and "we can make some money out of that invention" (Bellavista, Tr. 2011; see also Tr. 2016). Mr. Bellavista received an identical letter from RLO relating to a second invention submitted to RLO by him. At the meeting with the Account Executive, Mr. Schwartz, Mr. Bellavista was told that the invention, a bathroom toilet paper dispenser, was:

Great, wonderful, that I got both good ideas, that we can just make something. (Bellavista, Tr. 2033)

76. Mary Hill, who presented three ideas to RLO, was told by Peska, in respect to her first idea - a battery-powered pot washer - that it was "very good and that I should continue with it" (Hill, Tr. 2116). Later, a different Account Executive, Mr. Brooke, told her that her other two ideas - a vegetable cleaner and a battery-powered doormat - "were both very, very good ideas, and that I should go ahead with it" (Tr. 2120).

77. RLO client Howard Gorman, whose idea was a moveable

screen for the bottom of swimming pools to be used as a life saving device (Gorman, Tr. 2367), was told by his Account Executive:

A. Well, this woman that day that I went down there she thought it was a very good idea and she thought I should go ahead with it, that it probably would be successful. (Tr. 2412). [51]

Mr. Gorman also testified that, after examining a similar patent uncovered during the preliminary patent search, he:

. . . didn't think it was close enough to bother mine. Being that I was advised to go ahead with, apply for a patent, I figured (RLO) didn't figure these would knock mine out either. (Tr. 2375-76; CX 1209)

* * * * *

THE WITNESS: Well, I knew they looked to see if anything was patented like mine and then I knew this would be sent to (RLO) and I hoped if there was anything close to mine they'd advise me whether I should go ahead or not, which they did. They advised me to go ahead. (Tr. 2430-31)

78. Robert Coburn, whose idea was a body-guard device for automobiles, testified that he was told by Account Executive Nancy Archer that "I think you have a good idea here" (Coburn, Tr. 5495).

79. RLO client Richard C. Bowers, whose idea was a foldable repair creeper for use in repairing automobiles and trucks, testified that he received feedback on his invention from the Account Executive with whom he dealt as follows:

Q. Did Mr. Glass say anything about the market potential of your invention?

A. No, he didn't. He mentioned that if it was patented that they would probably seek owner operators They would go after this market first, then after the fleet owners. But he never mentioned, you know, money in that sense. [52]

Q. Did Mr. Glass discuss with you the patentability of your invention?

A. No, he didn't.

Q. Well, when you said Mr. Glass was enthusiastic, how did he show his enthusiasm?

A. Well, he showed in the tone of his voice. "You know, you've got a great idea here. We checked supply houses around without disclosing the nature of the invention and there is nothing on it. You know, I think you ought to proceed with it," something of this nature.

Q. Were you encouraged by what he said?

A. Yes, I was (Bowers, Tr. 5706-07).

80. RLO client Patrick Sarno, whose invention was a warning

light device for washing machines, testified that he was encouraged by his conversation with Account Executive Fred Plotnik:

* * * * *

A. . . I showed it to him. He thought it was very good. He says, "can I take it in?" He wanted to show it to somebody. He didn't tell me who. I don't know who he showed it to. He came back and he thought it was a good idea. (Sarno, Tr. 5336)

81. After submitting the Record of Invention form on a tiny tots' car seat designed for shopping carts (Brody, Tr. 3111), RLO client Diane Brody received a call from RLO Account Executive Martin Glass who told her she had a: [53]

. . . fantastic idea and they would be very interested in marketing my product and securing a patent for me. He painted a very rosy picture for me. I really believed what he said and he then said that he would go ahead and send me a, I am not sure what I would call it, but it was a contract. (Tr. 3090-91)

After completion of the patent office search, Account Executive Si Friedman told her:

. . . the search results looked very good, that there didn't seem to be anything else that was invented and that had a patent that was the same as my invention, and also he was very enthused on the phone and also said that he had a copy of the contract and they were very ready to go ahead. They also noted in this copy of the contract that they would have a 20 percent interest and I would have an 80 percent interest. It impressed me, because I thought, "Well, gee, this big company would really take a 20 percent interest in my little invention." (Tr. 3099-3100)

82. In June 1974 Ms. Brody received a development proposal from RLO together with the following message from Si Friedman, who at that time was supervisor of all RLO Account Executives (Tr. 6041-42): [54]

CK 12 2148 from the desk of...	
SI FRIEDMAN Regional Administrator	
MS. BRODY: I WOULD LIKE TO DISCUSS THESE SEARCH RESULTS AND THE COSTS WE ARE PREPARED TO ASSUME AS YOUR MINOR PARTNER. PLEASE CALL ME COLLECT * AND REFER TO FILE 41 R 510.	
<i>Si Friedman</i>	
RAYMOND LEE ORGANIZATION, INC. 230 Park Ave., New York, N.Y. 10017 *212 686-1172	

After reading the above message, and discussing with Si Friedman the twenty percent (20%) interest which RLO was taking in her invention, Ms. Brody was very impressed: [55]

Well, gee this big company would really take a 20 percent interest in my little invention. (Tr. 3100)

83. RLO client Edward J. Bucko understood RLO's 20% interest in his invention as follows:

. . . I understood that anybody that wants to get 20 percent in my idea must think it was a pretty good idea. If he (RLO) can make a million dollars for me he's entitled to 20 percent. (Tr. 4369)

84. RLO client Herbert M. Lark was told by an Account Executive that his invention, an insulated double automobile roof, "was a feasible idea" and that RLO would not go ahead with a preliminary patent search if RLO "felt that the idea. . . could not be patented or marketed" (Lark, Tr. 2512-13).

85. Dr. Albert Giaquinto was told his idea ". . . sounds like an excellent idea. Yes, we will pursue this. . ." (Giaquinto, Tr. 4496-97).

B. Appraisal as to Patentability

86. Mr. Sears, a Patent Office official and expert in patent matters, testified that he believed:

. . . for the inventor to be serviced in a proper manner he should receive an honest appraisal of patentability, [56] that is, potential patentability from counsel in connection with [a preliminary patent search.] In other words, if the prognosis is negative, we expect the registered practitioner to say so.

If the inventor wants to go ahead anyway, well, that is his choice. (Tr. 1090)

Mr. Sears testified further that merely providing copies of prior patents uncovered as the result of such a search and asking the individual to make his own decision or evaluation as to patentability would not constitute an adequate appraisal.

. . . That is a very sterile report. It forces the inventor to be his own patent counsel. He is not in a position to assess the possible patentability in any objective way, especially on questions of unobviousness. (Tr. 1090-91)

87. The RLO Preliminary Product Research Agreement states that the proposals made to the client by RLO shall not be construed as a "recommendation" or "evaluation" by RLO (see Finding 62). RLO's position stated in its findings is that:

... the client, who of course knows his idea and invention best, is the proper and appropriate person to decide whether to proceed after being given substantial information. (RPF, p. 36) [57]

88. No employee of RLO is authorized to render a patentability opinion. RLO and Lee admit that neither RLO nor Lee is authorized, qualified or recognized by the Patent Office to prepare, file or prosecute applications for patents before said Office (RLO Ans., p. 2). Respondents RLO and Lee state in their findings that "clearly, respondents do not advise or appraise with respect to patentability. . ." (RPF, p. 27; Dicks, Tr. 797-801).

89. In the years to and including 1971, RLO apparently prepared the patent application, had a patent attorney sign a power of attorney and filed the patent application for the client. The retained patent attorney never examined the application until it was rejected by the Patent Office (CX 1090; Shreve, Tr. 2851, 2869).

90. Philip Dicks, Manager of RLO's Engineering Department, testified that no evaluation of patentability of a client's idea or invention is made by RLO (Dicks, Tr. 797-98). He further stated that no evaluation of patentability was made by either RLO or the patent attorney retained by RLO at any time prior to filing the patent application in the Patent Office:

Q. . . . when the patents are mailed to the inventor is any evaluation made by the patent attorney who is retained by The Raymond Lee Organization as to patentability?

* * * * *

A. No. (Tr. 798)

Q. Is any evaluation made by a patent agent retained by The Raymond Lee Organization after the uncovered patents are mailed to the inventor?

* * * * *

A. No. (Tr. 799) [58]

Q. I will restate the question. Is any patent evaluation made, to the best of your knowledge, at any time by any patent agent or patent attorney retained, employed, hired by The Raymond Lee Organization, Inc.

A. No. (Tr. 799-800)

Q. Is any evaluation made by any patent attorney or patent agent or any other

employee of The Raymond Lee Organization prior, that means before, the filing of a patent application by the inventor or jointly by the inventor and The Raymond Lee Organization, Inc. in the United States Patent and Trademark Office?

A. To the best of my knowledge no. (Tr. 801)

91. Daniel Jay Tick, a patent attorney retained by RLO, testified that his "sole obligation is to prepare patent applications on behalf of (RLO) and their clients and to file them (Tr. 1020-21, 1041). He further testified:

Q. In most instances where you are representing (RLO) clients with respect to preparing and filing patents, do you meet with them personally?

A. No, because there is no need to.

Q. Then what is the nature of your contact with the clients of (RLO) that you represent?

A. By mail primarily. [59]

Q. In your communication with (RLO) clients by mail, do you counsel them as to the patentability of the proposed patent?

A. Not before it's prepared, no.

Q. Do you counsel them as to patentability before filing the patent application?

A. No. (Tr. 1023-24)

Mr. Tick further testified that he had never declined to file a patent application for an RLO client (Tr. 1024).

C. Appraisal as to Merit and Marketability

92. Gerald Udell, Director of the Experimental Center for the Advancement of Inventions and Innovations at the University of Oregon, stated it is very important, prior to attempting to market or license an invention, to have an initial evaluation as to merit and marketability:

... [I]f ideas are... put into the marketplace without a previous analysis or evaluation of the marketability of that idea, you have the problem that the channels become clogged with ideas that lack feasibility. (Tr. 8349)

This results in increased search costs to manufacturers and a highly ineffective approach to marketing an idea (Tr. 8349).

93. Record of Invention forms received from clients apparently are routed through the RLO Engineering Department before going to Account Executives (Coyle, Tr. 1512-13; Winter, Tr. 1695; Glass,

489

Initial Decision

Tr. 3847-48; Duber, Tr. 4209-10; Dicks, Tr. 4705-06). Mr. Dicks, Manager of RLO's Engineering Department, testified as follows: [60]

* * * * *

Q. Is potential marketability one of the factors taken into consideration in reviewing these record of invention forms? (Dicks, Tr. 4743)

* * * * *

A. Again I think the question is one that's open to varying definition, what will eventually become a marketable item is not definable.

Q. You are not answering the question, Mr. Dicks. Is potential marketability one of the factors taken into consideration in reviewing the record of invention form? . . .

A. Other than what I just said, *no*. I couldn't give you any more answer than that.

Q. Do you review any factors of marketability in your job function as head of the engineering department?

A. No, I don't. (Tr. 4744)

94. Lawrence Peska testified:

Q. Did Mr. Raymond Lee, to the best of your recollection, ever give any written presentation as to marketability of the idea or invention? [61]

A. He never gave an opinion. It was not the policy of the company to give an opinion, so therefore, the decisions, you know, whatever the client decided to go ahead with. The policy of the company was to present the results of the findings. (Tr. 4855)

95. Account Executives testified that when the client's Record of Invention form was received by them for sale of RLO's services to the client, there was no evidence that any evaluation as to marketability had been made (Coyle, Tr. 1512-13; Winter, Tr. 1695; Duber, Tr. 4209-10; Glass, Tr. 3847-48). They further testified that it was RLO's policy to sell a patent search and a development contract on all ideas presented by clients.

96. Former Account Executive David J. Switkin, who made most of his sales by telephone and mail, (Tr. 1777-78), described his conversations with prospective clients as follows:

I would ask the prospective client for details of his invention. . . . Once they disclosed the idea to me I was non-committal or I should say nonevaluative, but I was instructed never to turn anything down, but then from that point to go on and explain that there was this \$100 patent search. . . and then based on the results of the search they can decide whether or not they wanted to go into a development phase. (Tr. 1776-77)

97. Former Account Executive Stanley Winter, who was told by his immediate supervisor that the essence of his job was "to sell the

services of the company, not to turn them away" (Winter, Tr. 1698), recalled asking the advice of respondent Lee about a particular invention and was told to accept it: [62]

Q. Did Mr. Lee explain to you why he said you should accept this invention?

A. He gave me an answer. He told me to accept it and. . . he asked me whether or not I wanted to take the responsibility of even if there was something like a million to one chance of this being successful, will I take the responsibility of turning it down, or words to that effect. Obviously I can't reproduce the original conversation. . . (Tr. 1680)

98. Si Friedman, supervisor of Account Executives, testified about criteria used to reject inventions or ideas:

Q. Mr. Friedman, what types of inventions were account executives instructed by you to reject?

A. Inventions which violated accepted scientific principles which would be in the form of perpetual motion, printed matter which has no methodology, a business or a merchandising idea or a cure for a disease or other questionable type things which may verge on the obscene and we may not want to handle. I do not recall if that's all or not. We have a list in the office. (Tr. 6287)

99. Mr. Dicks, Manager of RLO's Engineering Department, testified:

A. There are several types of disclosures of inventions which are rejected by The Raymond Lee Organization. [63] Perpetual motion, cancer cures, printed matter, methods of doing business, simple or changes in only material or size of an existing product on the market. (Tr. 4741)

100. RLO's "SALES PROCEDURE AND ADMINISTRATION MANUAL," Copyright 1973, states:

All Engineering services will be declined for any proposal which purports or appears to be:

A. Contrary to accepted basic scientific principles (perpetual motion, anti-gravity, etc.).

B. A cure for a disease or for regenerating human tissue (cancer cures, hair growers, bust developers, etc.).

C. A method of doing business, conducting various transactions or merchandising techniques.

D. Printed matter exclusive of a particular method, process, formula, or mechanism.

E. Any item of questionable content should be held subject to verification of acceptability. (CX 2602F)

101. Former Account Executive Stephen Traube testified that he was not aware of any RLO policy with respect to the type of inventions that would be rejected:

Q. Well, put it another way: Were you aware of any Raymond Lee Organization policy with the type of inventions that would be rejected? [64]

A. No, sir. (Tr. 5170)

102. Former Account Executive William Coyle testified that he was encouraged to sell patent searches and development contracts to everyone and that the only types of inventions rejected by RLO, were "Anything that was obscene or very far out would be rejected, but it would have to be pretty bad" (Tr. 1524-25; see also Tr. 1527, 1549). Mr. Coyle testified that he never saw any written policy or standards for rejection of ideas (Tr. 1644).

103. Former Account Executive Paul Duber testified that he received the same idea from various clients on more than one occasion and he sold patent searches on "every one of them" (Tr. 4227). On occasion, however, he was permitted to reject ideas or inventions, as follows:

Q. Were you permitted to reject ideas or inventions?

A. To a very small degree. If there was something that we thought was nonsensical I would then take it in to Mr. Friedman who was our in-house inventor. . . who would then give it some thought as to which direction we might go or what we might add or subtract from or modify in order to make it an invention. Then I would be told ultimately to go back to my desk and sell this. (Tr. 4244-45)

When queried as to "How often did you tell clients of The Raymond Lee Organization after you received the preliminary patent search results that it was 'go' ", Mr. Duber replied: "*Every time*" (Tr. 4262). (Emphasis added)

104. Current Account Executives were asked during their testimony to recall the criteria used in rejecting inventions. Herbert Peckham stated during his testimony ". . . if it is a merchandising idea or there is no scientific principle for it" (Tr. 7042); "If its just [65] a merchandising idea". . . (Tr. 7044); "The only one we go by is perpetual motion" (Tr. 7046); "Only if it's absurd," "medical cures," "normally, we don't make judgments" (Tr. 7050); and "trademarks" (Tr. 7051). Current Account Executive Gerald Pion, testified that he rejects clients' inventions which are outlandish—"You get something that looks like a straight stick or outlandish—" (Tr. 6942).

105. The record does establish that some ideas or inventions are rejected by RLO. RX 660-670W are letters and names of clients whose ideas or inventions were rejected by RLO during the period

April 1975-December 1976 (Dicks, Tr. 7778). These documents and testimony leave the record unclear as to the date RLO commenced a policy of rejecting some ideas or inventions (Traube, Tr. 5170; Coyle, Tr. 1644; Winter, Tr. 1743), although there is some indication more rejections have been made in the recent past (Dicks, Tr. 4752). The record is clear, however, that the rejections of ideas or inventions were not based on marketability studies, but rather on a general policy of not accepting obviously absurd items.

106. RLO conducts no specific market research to determine the consumer demand for a client's invention or the feasibility or practicality of manufacturing the particular product or invention (Lee, Tr. 5005-06). Eugene Howard, who served as Manager of RLO's Invention Licensing Department from April 1975 through March 9, 1976, testified that he did not evaluate the inventions he was attempting to market in terms of their marketability (Tr. 7497-98). He had no information as to whether RLO ever conducted a marketing survey for a client prior to the time the client entered into a contract with RLO (Tr. 7548). He did recall seeing *one* marketing survey during his tenure at RLO, which survey was performed after the client signed an RLO development contract (Tr. 7549). Mr. Howard's efforts at marketing were to scan the inventions to see if they fit in with a manufacturer's line of products (Tr. 7564-65), send out prospectuses to companies to see what response he could elicit (Tr. 7553) — "You just kind of throw it into the ring and see what comes out" (Tr. 7552). [66]

107. The prospectuses mailed to companies were criticized by one licensing expert as failing to give any consideration to the key problem of manufacture that would be involved with a particular invention; whether it can be made, how it can be made, and can it be made economically or will special facilities be needed for manufacture (Lang, Tr. 3417-21).

108. Throughout its course of dealing, RLO has represented, directly, indirectly and by implication that it does provide potential purchasers of its services with a fair, adequate and thorough appraisal of the patentability, merit, and marketability of their ideas or inventions on which said purchasers can rely. In fact, neither RLO or any RLO employee provides potential clients with such an appraisal.

V. RLO REPRESENTS IT WILL, BUT DOES NOT, SUBSTANTIALLY
DEVELOP OR TECHNICALLY REFINE ITS CLIENTS' IDEAS OR
INVENTIONS

109. RLO's advertisements, brochures and letters refer to RLO as

"the idea people," and represent that RLO will develop the inventor's idea or invention—"developed for commercial appeal and cash/royalty sales to manufacturers (CX 2, 7, 25); "developed & prepared" (CX 3); "Developed-Prepared" (CX 16); "We will develop your idea, introduce it to industry, negotiate for cash sale or royalty licensing" (CX 20, 22, 26, 30, 33); "Developed & Prepared for Commercial Appeal and Sales Manufactured - Marketed" (CX 40; see also CX 41, 42).

110. CX 44, an RLO brochure entitled "THE CLIENT and the RAYMOND LEE ORGANIZATION" which is sent to potential clients in the Inventors Information Kit, gives a glowing summary of RLO's services to clients from the development of an idea to its ultimate introduction to industry. The brochure contains such statements as "Each step of the research, development and marketing process from original instructions to completed transaction, is carefully supervised. . ." In a section of the brochure entitled "INVENTION DEVELOPMENT" it is stated: [67]

Invention development is one of the most helpful and valuable services available through the Raymond Lee Organization, Inc. Here the objective of the company is to place the invention or new product idea in a suitable form for presentation to industry. Such a program should include preparation of necessary illustrations and written description of the features considered to be most important and valuable for the manufacture and marketing of the concept, . . . (CX 44J)

* * * * *

That is why independent inventors prefer the benefits and advantages of having the direct participation of an organization knowledgeable in the development and introduction of inventions to industry. As international Invention Developers, we have associated with us the facilities and personnel for carrying out the important phases necessary to introduce new product ideas to industry. (CX 44K)

111. CX 47, an Inventors Information Kit brochure, has a letter written by a Texas judge. The letter states in part:

It is my belief, that if my product cannot be put on the market by the Raymond Lee Organization, it cannot be done (see CX 51 which also utilizes this statement).

112. CX 49, the Inventors Information Kit cover, states that RLO will "help bring your idea from concept to reality." It states that RLO is an organization that seeks out inventors and innovators: [68]

help[s] them develop their products, and bring them to the attention of interested corporations.

* * * * *

Our organization has a staff and retains, as needed, qualified independent contractors

who are experts in their respective areas - product research, invention development, patent licensing, technical writing and illustration, marketing, and corporate negotiations. (CX 49D)

Under Invention Development it states:

... we'll supply you with whatever technical drawings and descriptive copy are required, from preliminary layouts to finished specifications, for presentation of the invention to industry. (CX 49D)

113. CX 50, a letter sent to clients in the Inventors Information Kit, states that:

... All services, from the initial examination of the invention, to product research, technical development, the preparation of drawings and promotional material and negotiations with industry are performed by persons experienced in their respective fields." (See also CX 174, 175)

114. CX 53, a brochure in the Inventors Information Kit, states:

After the Invention Developer technically develops and then refines the invention, it can be promptly converted into a patent application, ready for the inventor's signature and filing in the Patent Office. An invention Developer serves another function, too. He usually takes into consideration such factors as industrial preferences, manufacturers' requirements and consumer appeal. [69]

* * * * *

... If the service required is of a technical nature, where a background in design, development, manufacturing techniques and sales promotion are important, the Invention Developer would be more helpful. (CX 53D; See also CX 54, 55)

115. CX 68, another brochure in the Inventors Information Kit, states that:

... Our people can give you assistance and guidance with invention documentation, patent searches, product development and the introduction of your invention to industry. Your representative at RLO will help develop a comprehensive, individualized program for you that is sound and sensible-tailored to the specific needs of your invention. (CX 68A)

116. CX 174, a letter enclosed with the Inventors Information Kit, speaks of the "development" of the client's invention and states:

... As we are one of the largest companies in this field, our clients have the benefit of dealing directly with an internationally known organization that can provide those services needed for the effective development and sales promotion of their inventions.

* * * * *

... Since proper development can favorably influence the sale or licensing of inventions, our services can be of substantial importance to you.

117. The Record of Invention form which is sent to the prospective client in the Inventors Information Kit asks the potential client "*Does your idea or invention require technical development?*" (CX 52C, *emphasis added*; see also CX 90, 92, 2604, 2798 and 2799 for typical Record of Invention forms). [70]

118. Former RLO Account Executive Paul Duber testified that he informed potential clients "I told [them] simply that we [RLO] develop and refine inventions and introduced them to industry" (Tr. 4222).

119. RLO's development contract represents that RLO will technically develop and refine the potential client's idea or invention, as follows:

I am sure you know that inventions to be offered to industry for sale or licensing first require certain technical development, refinement and safeguards, as well as the preparation of important presentation material. Thus, to obtain serious consideration by companies in the field and to maximize the opportunity for success a well-planned program should be initiated. . . .

* * * * *

. . . Since we are Invention Developers, we have assembled a staff and retain, as needed, qualified independent contractors, for carrying out many of the important steps for introducing an invention to industry. Accordingly, we would . . . proceed with the immediate development of your invention as follows:

A. We shall first technically develop and/or refine your invention, if and to the extent necessary, for the preparation of suitable illustrations, and description of the commercial features you regard most important. (CX 100; see also CX 367, 840, 1022, 1208, 2149) [71]

120. RLO contends in its proposed findings that "the obvious focus of this provision [quoted above] is the preparation of sufficiently professional drawings of the consumer's invention to facilitate introduction of the invention to industry and permit the independent patent agent or attorney to use them" (RPF p. 31).

Respondent Lee testified that the services rendered by RLO under Paragraph A of its development contract are "to ultimately have suitable illustrations and description of the commercial features the inventor regards most important" (Tr. 5065). He stated that the embellishment that takes place in the preliminary drawings is to expand the uses and applications of the invention as broadly as possible, to preferably illustrate the invention in a form in which it is actually used, rather than solely its appearance. Lee further testified that ". . . the embellishment, development and refinement of ideas really is all a mental rather than a physical process" (Tr. 5012).

After approval of the drawings is obtained from the client, a

patent attorney receives the papers to prepare a patent application (Lee, Tr. 5066-68; see also Dicks, Tr. 867-68).

121. Philip Dicks, manager of RLO's Engineering Department, testified as to the work done in his department in connection with invention development, as follows:

A. . . . We review record of invention forms for proposed courses of action. When a contract is signed by a client for a development program, then we carry out those portions of the contract which are allotted to the engineering department, preparation of preliminary drawings, contact with patent representatives to have a patent, to have written specifications and claims prepared, correspondence with clients. [72]

Q. This is invention development?

A. I'd have to say in terms of your question these are services that we are contractually obligated to and, therefore, are invention development services. (Tr. 4726)

122. Patent expert Donald R. Dunner testified that if there is more than one inventor, both inventors are required to execute the oath and declaration which accompanies the patent application. Mr. Dunner described the difference between a skilled artist who merely makes changes, suggestions, or modifications of an obvious or trivial nature and when such suggestions or contributions go beyond that point, requiring such person to sign the oath and declaration as a joint or coinventor under 35 United States Code 116. Mr. Dunner testified as follows:

Q. Can you tell us when a person would become a coinventor?

A. Where a person merely contributes obvious suggestions within the limits of a skilled artist in that particular area, where he merely makes changes, suggestions, modifications of a relatively trivial nature, that such a normally skilled person would make, he would not be a coinventor. Where a person makes a suggestion or a contribution which is beyond that point, beyond the level of the normally skilled artisan to the point where what he suggests is embodied in the defined invention, whether it's the whole invention or only a part of the invention, in that situation he would be a coinventor or joint inventor with any other person who similarly made a contribution to that designed invention. (Tr. 3263, 3265-66).

[73] RLO does not execute the oath and declaration which accompanies its clients' patent applications as a coinventor. It can therefore be assumed any modifications to clients' invention suggested by RLO in the drawings prepared for the client are, from its own perspective, relatively trivial.

123. Since RLO does not evaluate an idea or invention as to patentability (Finding 88), does not evaluate an idea or invention as to marketability (Findings 93, 94, 105, 106), does not prepare models

of ideas or inventions as part of the development contract (Findings 106, 141), does no testing of products, and does not profess to be a coinventor of its clients' ideas or inventions (Schwartz, Tr. 4031; Lee, Tr. 5012-15; Traube, Tr. 5172; CX 1450-51), it is appropriate to conclude that the services RLO renders to a client in respect to the development and technical refinement of an idea or invention is limited to the preparation of sufficiently professional drawings to permit the patent attorney to use them in filing a patent application and to enable RLO to prepare a brochure or prospectus for circulation to industry (RPF, p. 31; Brody, Tr. 3113).

124. The testimony of RLO client, Dr. Albert Giaquinto, revealed that he obtained the following impressions from RLO advertisements:

. . . They would develop your idea from the beginning to the end and that you did not have to be a scientist or engineer, that they had a staff of people that would develop and present your idea to industry. That's what I thought, they would present my idea, which is all I had, an idea.

* * * * *

. . . They (RLO) would take the idea, present it to their engineering department, develop it. . . . So I assumed they were going to take it all the way from my idea to a finalized blue-print that an engineer could actually read and make a working model of. (Tr. 4495-96; See also Tr. 4500) [74]

125. Allen D. Guerard, an RLO client, testified that the RLO advertisement in the telephone directory "Yellow Pages" impressed him as a "package deal":

Well, the package deal research, development, marketing, licensing, new inventions and ideas or words to that effect, introduced to industry. (Tr. 3152)

This client thought RLO was the proper party to make a model of his invention (Tr. 3184).

126. Mary Hill, an RLO client, testified:

They said, you know, they will make a search and then a patent and after that they will refine the product. Then they will manufacture it, you know, the whole thing, . . . (Tr. 2121)

127. RLO client Katherine Mullen testified that RLO's advertisements "claimed to do the whole process, to obtain a patent for inventions or what have you" (Tr. 1821), and she was so impressed with RLO's brochures she did not pay much attention to the written contract (Tr. 1887-88).

128. Diane Brody, an RLO client, testified that the impression she gained from RLO was as follows:

Initial Decision

92 F.T.C.

From these letters, yes, from these phone calls. I didn't know any other way to go about marketing, developing, getting a patent for my invention. I saw this. This company took care of everything it seemed. I thought, "why not go with that?" (Tr. 3141)

129. The advertisements, brochures and letters make strong representations that RLO performs all the functions necessary to *develop*⁸ the idea or invention and make it [75] ready for introduction to industry. The record demonstrates that this term — develop the idea or invention — is not clearly and readily understandable to the ordinary consumer. The total impression which potential clients can and do receive from the advertisements, brochures, letters and contracts prior to the time the agreements are executed is that RLO will do all the work necessary to develop and refine the client's idea or invention so as to make it patentable and marketable to industry. Contrary to this impression, RLO makes only trivial embellishments and does not substantially develop or technically refine its clients' ideas or inventions.

VI. RLO HAS FAILED TO DISCLOSE THAT CLIENTS MAY HAVE TO
PAY ADDITIONAL FEES AFTER ENTERING INTO CONTRACTS WITH
RLO

130. RLO advertisements and brochures state that RLO will develop and prepare an idea for cash/royalty sales (CX 24); and place the invention in a suitable form for presentation to industry (CX 44J). None of the advertisements or brochures mention the cost of RLO's program. After a client contacts RLO, the client receives the Inventors Information Kit and returns a completed Record of Invention form. The client's next contact is receipt of a letter from RLO along with a Preliminary Product Research Agreement (Findings, 8, 9, 60-61).

131. The letter accompanying the research agreement requests that the client "permit us to have preliminary product research conducted at this time, for the relatively modest sum of \$100.00 . . ." (CX 96A). The letter also states that within a few weeks after receiving the results of the research, the client will receive RLO's "recommendation for the development of your invention" (CX 96A). Neither the letter, the Preliminary Product Research Agreement, nor the Account Executive reveals the cost of the recommendations in the form of a development contract which the client will receive at a later date.

⁸ Develop means, *inter alia* —

"to set forth or make clear by degrees or in detail; to make available or usable."
Webster's Seventh New Collegiate Dictionary

132. Former Account Executive Paul Duber testified:

A. It was not company policy to disclose any fees beyond that particular program that we were selling. If we were selling a [76] patent search we were not to tell them what the development program was going to cost. There was no disclosure of any type. (Tr. 4233)

133. After the preliminary research is completed, RLO forwards copies of patents located in the Patent Office search to the client along with a letter development contract (Finding 13). The development contract sets forth a flat fee for RLO's services:

* * * * *

. . . Since we are Invention Developers, we have assembled a staff and retain, as needed, qualified independent contractors, for carrying out many of the important steps for introducing an invention to industry. Accordingly, we would, in return for an assignment of a twenty percent (20%) minority interest in the invention plus a fee of \$775.00 proceed with the immediate development of your invention. . . (CX 100A).

134. The development contract further states:

On behalf of our venture, in which we have a twenty percent (20%) interest and you have an eighty percent (80%) interest, we will, at no additional cost to you, retain a registered patent attorney or agent to prepare an application for patent on this invention. . . . We will pay our proportionate shares of Government fees and, if prosecution of the patent application is agreed upon, we will pay our proportionate shares of those fees or costs upon which we mutually agree (CX 100A, 367). [77]

135. The additional fees which an RLO client may be required to pay, if the client follows through with the RLO program,* beyond the fee specifically set forth in the contract, are:

- (1) A Patent Office filing fee of \$65.00 (Gorman, Tr. 2395-98; Duber, Tr. 4233; Pion, Tr. 6921; CX 1220).
- (2) An attorney fee of approximately \$75-135 if the patent application is rejected by the patent examiner and the client desires to file an amendment to attempt to overcome the rejection (Guerard, Tr. 3223; Giaquinto, Tr. 4549-50; Kaplan, Tr. 5392; Lean, Tr. 8220; CX 1043, CX 1261A-C, CX 1267, CX 1583A, CX 1804A, CX 2169).
- (3) A patent issuance fee of a minimum of \$112 if a patent is allowed (35 U.S.C. 151; Lee, Tr. 5020-23).

* After a client has signed a development contract and at the time the United States patent application is being prepared, RLO offers the client the Canadian marketing program. There would be additional charges for this program which are not known to the client at the time the United States development program is commenced (Finding 17). There is also a \$50 Canadian filing fee if the client accepts the Canadian program (Brody, Tr. 3122-23).

(4) An assignment recordation fee of \$20 to record the assignment of RLO's 20% interest in the patent after it issues (RX 53-60).

(5) Charges for preparation of models (Lart, Tr. 2529-30; Brody, Tr. 3120-21; CX 1440A, CX 1447).

[78] RLO would, of course, pay its proportionate share of the additional governmental fees and patent attorney fees based on its 20% ownership (Duber, Tr. 4233).

136. The RLO contracts which clients enter disclose only the flat fees. RLO clients are sometimes told orally about the \$65 United States fee for filing the patent application (Gorman, Tr. 2395-98; Duber, Tr. 4233; Bucko, Tr. 4376-78; Giaquinto, Tr. 4522-23; Pion, Tr. 6921; Lean, Tr. 8209-10). However, clients are not told about the fee for filing an amendment to the patent application (Mullen, Tr. 1847; Bellavista, Tr. 2048-49; Hill, Tr. 2123; Brody, Tr. 3123; Duber, Tr. 4233; Giaquinto, Tr. 4549-50; Lean, Tr. 8209-10). One client was charged \$25 by the patent attorney for filing a paper to obtain a three-month extension of time within which to file an amendment, and an additional \$40 for an office visit with the patent attorney (Bucko, Tr. 4378).

137. Donald R. Dunner, a patent law expert, testified that clients seeking patents on their ideas or inventions should be counseled on the possibility that the initial patent application may be rejected and that further prosecution of the application by way of amendment may be necessary. He testified:

A. Yes, I think it is important to counsel a client as to what will happen down the line after the application is filed. The reason that it is important is that almost invariably applications which are filed in the Patent Office receive a first rejection. When I say "almost invariably," if I had to guess what the percentage would be it must be 80 or 90 percent if not higher than that, resulting not only in the requirement for further work for the filing of further papers, but resulting in the necessity of further expense to the [79] client. As a result of that fact unless the client is forewarned that there is going to probably be additional requirements for work, additional requirements for charges made to the client, the client may well be in for a rude shock at a point when he's already made an investment of a substantial amount of money. So my opinion is that it is necessary for him to be pre-advised before he makes any meaningful investment in the process. (Tr. 3257-58)

138. Patent Attorney, Richard S. Shreve, Jr., a patent attorney at one time retained by RLO for prosecution of its clients' patent applications, testified that all RLO applications were rejected at one point "which is always the case" (Tr. 2840, 2871).

139. Jere Sears, Deputy Solicitor of the Patent Office, testified

that the inventor should be briefed on the possibility of an initial rejection of the patent by the patent examiner (Tr. 1083).

140. Patent Office procedure dictates that an initial rejection of a patent application is a routine occurrence (Findings 137-138). Patent attorneys engaged by RLO to prosecute patent applications always charged an additional fee for preparation of amendments to patent applications, and that fact was well known to RLO (Finding 135). Further, RLO does not advise its clients of the likelihood of an initial rejection of the patent application necessitating the filing of an amendment and of the additional fee which will be charged the client for this service (Findings 130-134).

141. RLO does not advise clients prior to signing the development contract that a patent issuance fee and a patent assignment fee will be required if the client succeeds in obtaining a patent. Likewise, clients are not advised that there will be additional charges if the client desires a model of his invention to be made. [80]

VII. RESPONDENTS LEE AND RLO HAVE FAILED TO DISCLOSE
THAT THEY ARE NOT REGISTERED PATENT ATTORNEYS OR
PATENT AGENTS AND ARE NOT QUALIFIED OR RECOGNIZED TO
FILE OR PROSECUTE PATENT APPLICATIONS BEFORE THE UNITED
STATES PATENT OFFICE

142. Many advertisements and brochures disseminated by RLO detail the educational and professional background of Raymond Lee. For example, CX 2604K, a stapled-on addendum to the typical Inventors Information Kit, contains the statement "NO ORGANIZATION IS ANY BETTER THAN ITS LEADERSHIP" and lists the professional background of RLO's founder, Mr. Raymond Lee, as follows:

Founded by Raymond Lee, B.S., I.E.; J.D. (LL.B) former: U.S. Patent Office Examiner, U.S. Dept. of Army Patent Advisor, U.S. Registered Patent Attorney, Canadian Registered Patent Agent, Advisor to the TV series "The Big Idea." (See also CX 60D)

143. Other RLO brochures state:

The Founder-President of the Company, Raymond Lee, has degrees in Industrial Engineering and Law, and has had extensive experience with inventions and new products. He is a former: United States Registered Patent Attorney, Canadian Patent Agent, United States Patent Office Examiner and United States Department of Army Patent Adviser. (CX 44D, 45D, 46D)

144. RLO's Inventors Information Kit contains the reprint of an article from *Home Craftsman* magazine which features the photograph of Lee and this information: [81]

Initial Decision

92 F.T.C.

Raymond Lee served as Patent Examiner in the United States Patent Office from 1949 to 1953.

He was then appointed United States Government Patent Advisor for the Pitman-Dunn Laboratories of the Frankfort Arsenal in Philadelphia, where many inventions were developed in which the United States Government had an interest. For approximately eight years following his resignation as U.S. Government Patent Advisor, he practiced in Philadelphia as a registered patent attorney . . .

Now, he is an Invention Developer, whose services are sought by inventors, lawyers and manufacturers throughout the United States and in foreign countries. (CX 53B, 2604)

The front page of this reprint states:

This is a reprint of an article prepared for Home Craftsman Magazine by Raymond Lee, formerly a Registered Patent Attorney, U.S. Patent Office Patent Examiner and U.S. Government Patent Advisor, who is now an Invention Developer assisting inventors, manufacturers and attorneys throughout the world. (CX 53A)

145. Representations about individual respondent Lee's professional qualifications in the patent and legal field are sprinkled throughout the Inventors Information Kit and have been contained in RLO's advertising literature for many years (Peska, Tr. 7148-49; CX 2, 3, 40, 49, 53-55, 60, 68). Such statements could reasonably be understood by potential clients to impliedly represent that Raymond Lee is currently a private, as compared to government, patent attorney or agent and is qualified to file and prosecute patent applications on behalf of RLO clients. [82]

146. Implied representations of RLO's high qualifications in handling patent matters also appear throughout RLO's promotional literature. CX 68 and 2604C, RLO's brochure entitled "THE INVENTION GAME," contains an article entitled "TALE OF THE TWIST-OFF A PRODUCT SUCCESS STORY," which tells how former Philadelphia patent attorney, Raymond Lee, helped the inventor of the "Twist-Off" bottle cap after his patent had expired. The article states:

An unexpected side story also developed. . . . Raymond Lee responded to the need for a complete service to protect and promote the interests of the small independent inventor. He resigned his Patent Office and Bar affiliations and left behind a flourishing practice narrowly restricted to patent and trademark law to establish an organization offering assistance in all phases of invention development and marketing. (CX 68C)

147. The promotional brochure entitle "THE CLIENT AND THE RAYMOND LEE ORGANIZATION" repeatedly emphasizes the high qualifications and expertise attributed to RLO's staff with statements such as:

Our Product Research Department will act as your Intelligence Agency . . . [to] . . . probe and study . . . the related records of the United States Patent Office. They search prior U.S. patents . . . They wind their way through Patent Office records and corridors often talking to Patent Office Examiners. . .

Each person in our Product Research Department . . . is a specialist in his field, in [83] some cases having been an Official Examiner in the U.S. Patent Office where he received his "basic training." (CX 44I, 45J, 46I, 2604H)

* * * * *

The Company has facilities for assisting in the establishment of "International Rights of Priority"¹⁰ for any invention in which it owns an interest." (CX 44"O", 45"O"; see also CX 44C, E, G-H, 45C, E, G-H, 46C, E, G-H, 50).

148. Although a few brochures refer to RLO retaining, as needed, independent contractors for establishing "International Rights of Priority" or retaining, on behalf of the joint venture (RLO and its client), the services of a registered patent attorney or agent to establish "patent pending" status (CX 46"O", 49D, 2604H), such statements do not preclude an understanding on the part of potential clients of RLO that the corporation is qualified to prepare, file and prosecute patent applications.

149. Representations of respondents qualifications and experience made in RLO promotional literature have, in fact, been understood by some RLO clients to mean that respondents could prepare, file and prosecute applications on their behalf before the Patent Office (Mullen, Tr. 1821, 1842, 1873-74; Gorman, Tr. 2374-75, 2424-25; Sarno, Tr. 5342). Mr. Peska, RLO's former Vice President, testified that in his face-to-face dealings with clients he never affirmatively disclosed the fact that Lee was not a patent attorney and was precluded from filing patent applications with the Patent Office (Peska, Tr. 7297-99). [84]

150. The first contract which RLO offers a potential client, the Preliminary Product Research Agreement, is for the purpose of providing the client with patents which may be located by RLO in a search of Patent Office records. Thereafter, RLO sends the client copies of patents which were located in the search. Prior to execution of the development contract, RLO has handled all patent aspects of the idea or invention. The client is not informed of the name of the patent agent retained by RLO until the patent application has been

¹⁰ This term as used by respondents apparently refers to those rights extended to inventors under 35 USC 119 which gives, under certain circumstances, a patent application filed in a country which has entered a treaty providing for reciprocal treatment the benefit of the earlier filing date on a patent application filed in another signatory country. RLO's promotional literatures references to "facilities for assisting in the establishment of International Rights of Priority" may, therefore, be read to represent that RLO can assist in filing U.S. or foreign patent applications since such filing must be accomplished in order to establish these rights. An uninformed person may make any or all of these assumptions in this highly technical area.

prepared. This course of dealing impliedly represented to clients that RLO is qualified to prepare and file patent applications.

151. In order to give an opinion as to patentability, a person must be an attorney admitted to the practice of law in some jurisdiction, or a patent agent registered to practice before the Patent Office (Dunner, Tr. 3241, 3249-50; Sears, Tr. 1066-67, 1114). All lawyers and patent agents who represent clients in patent matters before the Patent Office are required to be registered with the Patent Office (Sears, Tr. 1066-67). A patent agent is an individual registered with the Patent Office who is not an attorney (Sears, Tr. 1067). An individual can become a registered patent attorney by being a member of a bar and taking an examination given by the Civil Service Commission, or by serving as a Patent Examiner for a four-year period (Sears, Tr. 1067). A corporation as such may not render a patentability opinion (Dunner, Tr. 3250).

152. Respondents admit that Mr. Lee is not now a registered patent attorney or agent and is not now permitted by law to render a patentability opinion and that respondents are not qualified or recognized by the Patent Office to prepare, file or prosecute applications before such office (Lee and RLO's Ans., ¶¶2,6; Lee, Tr. 495-96). [85]

153. The promotional materials disseminated by RLO and its course of dealing has the capacity to mislead potential clients as to the present status of Lee and RLO. Having created the potential for deception, respondents had an affirmative duty, which they failed to meet, to affirmatively disclose to potential clients that Lee and RLO were not registered patent attorneys or agents and were not qualified to prepare, file or prosecute patent applications before the Patent Office.

VIII. COMPLAINT COUNSEL FAILED TO MEET ITS BURDEN OF
PROOF AS TO UNNECESSARY DELAY ON THE PART OF RLO IN
OBTAINING PATENT PROTECTION FOR CLIENTS

154. The first contractual agreement between RLO and its clients is a Preliminary Product Research Agreement. This agreement provides a time frame for completion of the work contemplated in the agreement as follows:

Approximately eight weeks is to be allowed for completion of this matter. (CX 3101)

155. The development contract contains no time schedule for completion of the services to be performed by RLO pursuant to that

contract. It does represent that RLO will "proceed with the immediate development" of the invention, and that after patent pending status is established, a sales letter and prospectus will be prepared. RLO makes a further representation that it will "proceed immediately" upon receipt of the development contract to have the invention "processed at an early date," and the contract emphasizes that time is an extremely important factor and important rights are sometimes lost because of unnecessary delay (CX 1846). Other than the above general statements in the development contract, clients are given no dates by which patent protection will be established (Dicks, Tr. 971-72).

156. Complaint allegations concerning delay are limited to unnecessary delay in obtaining patent protection for clients. The complaint does not specify [86] whether the "patent protection" contemplated is patent pending status or the obtaining of an actual patent. Further, it does not appear that the failure to eventually obtain a patent is contemplated by complaint counsel as "unnecessary delay." Complaint counsel's proposed findings relating to delay concentrate on that delay between the execution of the development contract and the time the patent application is filed in the Patent Office, although complaint counsel apparently does not seek to prove "unnecessary delay" by establishing delay after the clients' idea has been presented to the patent attorney retained by RLO (CCPF, pp. 673-86).

157. RLO permits clients to pay its charges for services in installments (Dicks, Tr. 907-08; Duber, Tr. 4262; CX 771-772). RLO also has a general policy that the patent application will not be filed until payment in full has been made by a client (Dicks, Tr. 907-08, 967-68; Coyle, Tr. 1516, 1552; Salemi, Tr. 2461; Glass, Tr. 3868; Duber, Tr. 4235-36; Bucko, Tr. 4361-63; Giaquinto, Tr. 4512, 4520-21; Peska, Tr. 4873; CX 771-772, 1795-1796). RLO clients are not advised of this policy at any time prior to execution of the development contract.

158. The record establishes that there has been substantial delay in a number of instances (Coyle, Tr. 1552; Switkin, Tr. 1791-93; Hill, Tr. 2158; Segasture, Tr. 2293-94; Duber Tr. 4231-32; Giaquinto, Tr. 4512, 4520-1; Bucko, Tr. 4369-72; Traube, Tr. 5173; CX 1022, 1032, 1853-1854, 1858, 1870, 1871-1872). Some of this delay is due to clients making payments in installments (Coyle, Tr. 1552; Duber, Tr. 4234-36).

159. The give and take obviously inherent in the process of embodying the clients' ideas in drawings that will be filed in the

Patent Office account for some passage of time (Gorman, Tr. 2423; CX 42).

160. Complaint counsel has not separated out the necessary from the unnecessary delay. Thus, complaint counsel has not met the burden of establishing that unnecessary delay occurred in a significant number of instances, both terms being relative and subjective. More importantly, there is no evidence of any patent protection being lost, forfeited or diluted because of any alleged delay. [87]

IX. RLO FAILED TO DISCLOSE MATERIAL FACTS RESPECTING
CLIENTS' ASSIGNMENT OF AN INTEREST IN THEIR IDEAS OR
INVENTIONS TO RLO

161. RLO's development contracts with its clients provide that the client assigns to RLO an interest in the invention, and in any patent rights that may be applied for or granted on the invention. The interest usually assigned to RLO is twenty percent (20%) (CX 100). RLO's interest in its clients' patents is routinely recorded in the Patent Office whenever a patent is issued to one of its clients (RX 53-60).

162. 35 U.S.C. 262 provides as follows:

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use or sell the patented invention without the consent of and without accounting to the other owners.

163. Jere W. Sears, Deputy Solicitor of the United States Patent and Trademark Office, testified regarding Section 262 of the United States Patent Laws, as follows:

Q. Mr. Sears, can you explain for the Court the import and meaning of Section 262 of the United States Patent Law referring to the assignment of an interest in a patent to a joint owner?

A. Yes. Oddly enough, a joint owner of a patent may exploit the patent without making any account or reckoning to the other joint owner. . .

* * * * *

JUDGE BARNES: Mr. Sears, the two joint owners would have an action, I guess, at law, as to accountability? [88]

THE WITNESS: Not under the patent statute. It would require a collateral agreement. (Tr. 1100-31)

164. Donald R. Dunner, a patent law expert, testified similarly regarding the effect of Section 262:

... one aspect of an assignment of an interest in an invention is that the joint owners of an invention and of rights in that invention which would include patent rights, need not have the consent of one another in order to make use or sell the invention to others. And, in fact, as the courts have interpreted, the provision in question in the patent statutes, they do not need the consent of, nor do they have to account to the others as a result of the licensing of the invention or sale of an interest in the invention unless they have entered into an agreement. That is one critical aspect of the consequences of an assignment. (Tr. 3251)

Mr. Dunner further testified that a client should be advised as to the legal import and meaning of his making of an assignment of an interest in his invention:

... [T]he client should be advised and he should be advised by whoever is advising him, whether that person is a patent attorney, patent agent or otherwise. And the reason he should be advised is that unless he is so advised he runs the risk that one of his joint owners can effectively nullify his interest in the subject matter of the invention by either [89] licensing it to others without accounting to the inventor, by assigning an interest to others without accounting to the inventor or by doing anything to the subject matter without accounting to the inventor. And the end result of that is that if \$10 million were made on the invention as a result of the activities of the joint inventor, those \$10 million could conceivably not come to the original inventor even to the extent of a penny unless they have a prior agreement.

JUDGE BARNES: Even if the inventor brought a court suit for an accounting?

THE WITNESS: Yes. Because Section 262 of Title 35 makes it clear there is no accounting without a prior agreement. (Tr. 3255)

165. RLO accurately contends that there is no evidence RLO ever attempted to make, use or sell the patented invention of a client without the consent of and without accounting to the other owner (RPF, p. 44). The record is clear, however, that RLO does not counsel potential clients as to the significance of 35 U.S.C. 262 in respect to the assignment of an interest in an invention. One Account Executive testified that he did not know what that section of the patent laws means (Coyle, Tr. 1532; see also Peckham, Tr. 7035, 7072). Clients testified that they received no counseling by RLO in respect to the significance of 35 U.S.C. 262 (Mullen, Tr. 1853-54; Kaplan, Tr. 5384; Vigliotti, Tr. 5415; Coburn, Tr. 5497; Friedman, Tr. 5564; Lean, Tr. 8199-8200). RLO clients do not have any communication in any respect with a patent attorney or patent agent until after the development contract has been executed and the assignment of an interest in the invention to RLO (Dicks, Tr. 883-94; Lean, Tr. 8202). [90]

166. The assignment of an interest in a patented invention is a very critical undertaking, and the legal consequences of such an assignment are material facts which should be disclosed to the

inventor prior to any assignment (Dunner, Tr. 3255). This RLO has not done.

167. RLO further contends that a co-owner may deal with a patent as a full owner only "in the absence of any agreement to the contrary" (35 U.S.C. 262), and that the very vehicle of the assignment — the development contract — is an agreement to the contrary within the meaning of the statute since it provides RLO will do nothing with respect to the clients' invention without the clients' approval (RPF, p.44). The language of the development contract relied upon by RLO as "an agreement to the contrary" is as follows:

We shall actively negotiate with manufacturers expressing an interest in acquiring rights to this invention. While we cannot give assurances that our participation will result in financial success, you will be kept informed of our progress and the acceptance or rejection of any offer will be entirely up to you. (CX 100B, 744, 1250, 1832, 1986, 3077)

168. While the RLO development contract argueably might offer some protection to the client, whether the language of the contract is an "agreement to the contrary" within the meaning of Section 262 has never been litigated in the courts. In light of the specific language of 35 U.S.C. 262, a specific contractual agreement between RLO and the client would obviously be more appropriate than the questionable and non-specific language of the development contract which is routinely signed by RLO clients. [91]

X. RLO'S UNAUTHORIZED USE OF THE NAMES, PHOTOGRAPHS AND
QUOTATIONS OF PUBLIC FIGURES IN ITS PROMOTIONAL
LITERATURE

169. Many of the promotional brochures distributed to potential clients by the RLO contained the names, photographs and quotations of prominent public officials impliedly endorsing or recommending RLO or its services (CX 47, 61D, 1789B, 2144, 2179A, 2181A, 2192A). The quotations set forth in such brochures were excised from routine responses written by such officials after receiving a letter from RLO advising them of the services RLO provides which might be of assistance to their constituents (Peska, Tr. 4798-99; Bartlett, Tr. 303-04; Randolph, Tr. 196-98, 211). The photographs reproduced in conjunction with such quotes were obtained by requesting photographs from the respective officials' office without disclosing the intended commercial use to which such photographs would be put (Peska, Tr. 7167).

170. The front page of one RLO brochure utilizing photographs and quotations of public officials, CX 47, states:

For many years, The Raymond Lee Organization has enjoyed the respect and esteem of the business community.

We are proud of our reputation and hope you will soon join our long list of satisfied clients.

The last page of this brochure is entitled "A FEW WORDS FROM SOME PROMINENT NATIONAL LEADERS" and sets forth photographs and quotations of former Senator Peter H. Dominick of Colorado, former Congresswoman Julia Butler Hansen of Washington, United States Senator Jennings Randolph of West Virginia and former Governor [now Senator] Dewey Bartlett of Oklahoma. (See also, CX 2170A, 2192A). A variation of this brochure, CX 1789B, substitutes photographs and quotations of Congressman William B. Widnall of New Jersey and former Congressman Alphonzo Bell of California for former Senator Dominick and former Governor Bartlett, but in all other respects is identical to CX 47. [92]

171. Another RLO brochure entitled "Words Of Praise From Some Of Our Clients" also reproduces on the back page "A FEW WORDS FROM SOME PROMINENT NATIONAL LEADERS" (CX 61D, 2144D, 2204B-E). Public figures whose photographs and quotations are used in this brochure include United States Senator Hubert H. Humphrey of Minnesota, former Governor Kenneth M. Curtis of Maine and former United States Senator John V. Tunney of California, and former Congresswoman Julia Butler Hansen. The brochure also contains a photograph and letter praising RLO from Judge Roy H. Adams, Bandera County, Texas.

172. RLO also distributed to some potential clients a brochure entitled "WESTERN UNITED STATES Does Its Part to SET THE PACE For PROGRESS" (CX 73, 2181). An inner page of this brochure reproduces in its entirety a letter to Mr. Peska of RLO from former Congressman Alphonzo Bell written on Congressional letterhead and from which the date has been deleted. A photograph of Congressman Bell is also reproduced with the letter (CX 73D, 2181A and E).

173. Senator Randolph, former Congressman Bell and Senator Bartlett testified in this proceeding that they had never endorsed RLO, were unfamiliar with RLO services and had never granted permission to RLO to use their photographs, titles or quotations from their routine correspondence in RLO promotional literature (Randolph, Tr. 185-86, 188-89, 212, 231; Bell, Tr. 242, 245-46; Bartlett, Tr. 293, 295-96, 304-05). Permission to use their photographs, titles and quotations had never been requested and they unanimously objected to such use (Randolph, Tr. 188-89; Bell, 246-47, 250-51, 262, 290; Bartlett, Tr. 295-96, 306-07, 310). In addition to this testimony,

correspondence to RLO from these witnesses, as well as such correspondence from Senator Humphrey and former Senators Dominick and Tunney, objecting to RLO's unauthorized commercial use of their photographs, titles and letter quotations was received in evidence (CX 2183, 2185, 2193, 2204A, 2217A-B, 2225).

174. Routine correspondence from Mr. Friday, former Deputy Commissioner of the New York Department of Commerce, and Mr. Risch, former Director of the New York Office of the State Department of Commerce, written in 1967 on State of New York Department of [93] Commerce letterhead was also reproduced in some RLO promotional brochures distributed to potential clients (CX 60B, 2195, 2196, 2199D, 2604D). Use of Mr. Friday's letter in RLO's brochures helped to create, or reinforce, the erroneous impression that RLO had received such recommendation or endorsement from Mr. Friday and/or the State Department of Commerce. Mr. Friday, in 1967, advised Raymond Lee that some individuals were under the impression that RLO had been recommended by the New York State Department of Commerce and requested that reference to himself or the Department in all future dealings with RLO clients cease (Friday, Tr. 1486, 1490-91; CX 2198).

175. Promotional brochures sent to potential RLO clients in the Inventors Information Kit also contained photographs of the former Mayor of New York City, John V. Lindsay, awarding a "Declaration of Commendation" to Mr. Raymond Lee and reproduced a facsimile of this commendation. Richard Lewishon, former Finance Administrator of New York City, also appears in the "Commendation" photographs (CX 58E-F, 59B-C, 60B-C, 80B, 1078E, 1206B&D, 2142B-C, 2199E-F, 2200B-C, 2796A-D, 3069A-D; RX 12). Many of the brochures containing former Mayor Lindsay's photograph state in bold type on the cover page that RLO is "INTERNATIONALLY KNOWN BY GOVERNMENT COMMERCE & INDUSTRY FOR ITS SUPPORT LEADERSHIP & INTEGRITY" (CX 1242A-D, 2142A-D, 2796A-D).

176. The "Declaration of Commendation" was devised by the City of New York Administration to show its appreciation to individuals and organizations doing business in New York City for their participation in a program offering assistance to small businesses in the city via the Executive Volunteers Corps and to publicize this program (Watt, Tr. 532, 610-11, 657; Lindsay, Tr. 987-88, 998). Mr. Peska testified that he and Mr. Lee received such commendations for their personal assistance to individuals in developing and marketing their inventions and ideas (Peska, Tr. 4802). [94]

177. Although the use to which a "Declaration of Commendation" was put was never monitored (Watt, Tr. 641), neither Mayor

Lindsay nor the New York City Department of Commerce had intended to endorse the recipients of these awards (Watt, Tr. 640; Lindsay, Tr. 985-86). Permission of former Mayor Lindsay had never been requested to use his photograph in RLO's brochures nor had such permission been granted (Lindsay, Tr. 986, 990-91; Peska, Tr. 4806).

178. Promotional brochures sent to prospective RLO clients also contained a photograph of an RLO client, Mr. Hatch, shaking hands with President John F. Kennedy (CX 60C, 2604D). This photograph was forwarded to RLO by Mr. Hatch for use in its advertising programs, but is apparently unrelated to any relationship between RLO and Mr. Hatch and impliedly misrepresents an endorsement or relationship between RLO's activities and President Kennedy (CX 60C, 2604D).

179. RLO's position with regard to their unauthorized use of public officials' photographs, titles, and letter excerpts in their promotional literature has consistently been that "[t]he First Amendment protects RLO's accurate statements and portrayals, whether consented to or not" and that if any cause of action arises from such unauthorized use it is solely a private right (RRP, pp. 32-33, 49-50). When, in October 1973, Senator Randolph objected to the use of his name, title and letter excerpt in RLO's promotional literature, he was advised by RLO's counsel, Samuel N. Greenspon, that:

... when you wrote the letter [used in the brochure] to The Raymond Lee Organization, Inc. it [RLO] became the owner of that letter and was certainly entitled to use the same so long as it did not misquote you. (CX 2218A)

180. The record also discloses that when requests were received from public officials to discontinue the unauthorized commercial use of their photographs and letters in RLO promotional literature, RLO did not promptly comply with such requests (*Contra*, Peska, Tr. 7167). [95] For example, former Congressman Bell initially requested removal of his letter excerpts and photograph from RLO's brochures in April of 1971 (CX 2183). In March of 1973, upon learning of RLO's continued unauthorized use, he again objected to such use "in the face of written instructions that you discontinue this unauthorized practice" (CX 2185; see CX 2184, 2218).

181. RLO asserts that use of public officials' letters and photographs in their promotional literature was not intended to constitute an endorsement of RLO by the cited official nor could the letter excerpts be construed as an endorsement (CX 2218B; Peska, Tr. 4866; Julien, Tr. 8111; RPF, pp. 49-50, 52). While denying any intent to

imply endorsement by the public officials cited, RLO has advanced no other commercial reason for inclusion of these photographs and letter quotations in its promotional literature.

182. Contrary to RLO's statement that "... there is no evidence that anyone thought or even could think that the presence of such material [use of public officials' names, titles, photographs and letters] was or could be construed as an endorsement of ... such individuals of RLO's services" (RPF, pp. 49-50; CX 2218B), public officials themselves recognized the capacity to mislead inherent in such practice. Senator Randolph's letter to RLO objecting to this practice states:

... The fact that my reply to a 1967 letter offering assistance has been misrepresented by you as my 'endorsement' of your enterprise has apparently led several West Virginians to engage your services. (CX 2217A)

(See also CX 2225, Senator Tunney's letter to RLO) Former Congressman Bell also recognized the capacity to mislead inherent in RLO's practice when he testified that, although nothing in the brochure states he endorsed RLO, "... the use of the picture and the use of the letter that way in the brochure might imply that I am actively supporting their operation" (Tr. 288). [96]

183. Clients of RLO testified that they were favorably impressed by the photographs of public officials contained in RLO's promotional brochures whether or not they perceived this material to be an actual endorsement or recommendation (Salemi, Tr. 2444-46; Brody, Tr. 3086-87; Bucko, Tr. 4358; Kaplan, Tr. 5401; Coburn, Tr. 5524-55; Bowers, Tr. 4701-02).

184. A review of the promotional brochures received in evidence containing the names, photographs and quotations of prominent public officials demonstrates the inherent capacity of this material to mislead potential RLO clients into the belief that such individuals endorsed or recommended the RLO organization and its services (CX 47, 61D, 1789, 2144, 2179A, 2181A, 2192A).

XI. RLO'S SERVICES WERE AND ARE OF LITTLE OR NO VALUE
TO ITS CLIENTS

185. Paragraphs Twenty One and Twenty Two of the complaint allege that respondents' unfair or deceptive acts or practices have induced persons to pay over to respondents substantial sums of money for services of little or no value, and respondents have failed or refused to refund such sums. The retention of such sums of money is alleged to be a continuing unfair act or practice. These allegations of the complaint require a summarization of the representations

respondents have made to clients, an analysis of the services actually rendered clients, and an evaluation of the value of such services to clients.

A. RLO's Representations to Potential Clients

186. RLO's advertisements represent that an inventor's idea or invention will be "developed and prepared" (CX 3), and "we will develop your idea, introduce it to industry, negotiate for cash sale or royalty licensing" (CX 20, 22, 26, 30, 33). RLO brochures which the potential client usually receives in the mail represent that the inventor's idea or invention will be evaluated by a highly knowledgeable, competent, efficient and experienced organization, operating on an international level which is held in high esteem by prominent public officials and by clients and corporations for its integrity and service, and [97] which has broad access to major corporations actively seeking new products through RLO (Findings 30-35, 38, 44-53, 60-62). Advertisements and brochures disseminated by RLO also cite atypical earnings of past RLO clients (CX 30, 32, 64, 67-68, 2593).

187. If a potential client's idea or invention is *accepted*, RLO represents it will present an individualized proposal to the potential client (see Findings 32,41,42,59-61, 65). An Inventors Information Kit brochure, CX 49, states an inventor "may need a specialist to tell you what your proposed product's chances are in the competitive marketplace." RLO will "study your idea" and "suggest a procedure for commencing its development and commercialization." An RLO brochure, CX 44, states that RLO's experience helps it "select new products" of interest to progressive companies. The Record of Invention form authorizes RLO to examine the idea or invention "for the purpose of receiving its comments and suggestions for the international development and introduction of this invention to industry" (CX 52). After review of the Record of Invention form, RLO will submit to the client "a suggested procedure for development of your invention" (CX 50). The Record of Invention form will enable RLO to examine the invention, "explain how we would like to proceed" and "if we cannot accept your invention or idea, we will promptly inform you of our reason" (CX 51).

188. The letter sent to the client with RLO's Preliminary Product Research Agreement states RLO has "completed our examination of it" [the Record of Invention form] and "we would like to suggest" preliminary product research. RLO represents that within a few weeks thereafter the client will receive "the confidential results of our findings" and "our recommendation for the development of your invention, and arrangements on which we would accept a participat-

ing interest in this program. You should, therefore, have this investigation made at once" (CX 96).

189. The development contract in the form of a personalized letter constitutes a recommendation by RLO that the client should proceed with the program outlined in the letter contract (Finding 65). As a former Account Executive indicated, RLO's development [98] proposal represents to the potential client that his idea or invention is something RLO thinks it can sell; otherwise, the proposal would not have been sent out to the potential client (Findings 67-68).

190. Telephone calls from Account Executives encouraged potential clients to enter into research and development contracts. Testimony by Account Executives clearly indicate that these contacts with potential clients created the impression the idea or invention being considered had a good likelihood of making money for the client and for RLO (Findings 53-55). There was "always inferences of a hint of a mint. Otherwise we would never be able to sell the program" (Duber, Tr. 4293). "You have to tell them there is an opportunity. They are not going to pay \$1,500" (Coyle, Tr. 1617).

191. The fact that RLO, represented to be a highly respected organization experienced in the international development of inventions, is willing to take a twenty percent (20%) interest in a client's idea or invention creates the impression that the client's idea or invention has a good opportunity for success — "Well, gee, this big company would really take a 20 percent interest in my little invention" (Brody, Tr. 3100). This procedure by which RLO takes an interest in a client's idea or invention is utilized as a sales feature by Account Executives (Findings 67,81-83). Further, the statement in the development contract which permits the client to repurchase RLO's interest within six (6) months for \$1,000 indicates to the client the idea or invention has substantial monetary value (CX 100; Finding 14).

192. The compensation of Account Executives under which a substantial portion of their income is based on commissions on sales, and RLO's method of doing business, relying for income solely on the sale of services and not on the successful marketing of inventions, makes RLO's operations conducive to pressure sales tactics and exaggeration of clients' chances for success. [99]

193. RLO's advertisements, brochures, letters, contracts, method of doing business, and the oral representations made by RLO employees, convey the definite impression to potential clients that the ideas or inventions accepted by RLO for "development" and "introduction to industry" are feasible and marketable and that there is a reasonably good chance that the inventor will be

successful. This is the *total picture* presented to potential clients prior to the time the client signs the RLO development contract (Findings 44-58).

B. Value of RLO's Services

194. The most direct and meaningful evidence of the value of RLO's services to its clients is the amount of money earned by clients through the licensing of ideas or inventions handled by RLO. The record is clear in this respect.¹¹ RLO has negotiated only eight (8) licenses for its clients during the period 1968 through 1976; four (4) of these licenses were for one invention (Lee, Tr. 5119; CX 3937). In 1976 RLO advised potential clients in the State of California, pursuant to a state statute, that only three (3) out of thirty thousand (30,000) clients of RLO had earned more money from their inventions than they had paid to RLO in fees (CX 2600).

195. RLO contends that there are an "unknown and untold number of successful arrangements entered into. . . by RLO clients without RLO's knowledge" (RPF, p. 35). Support for this contention is based on general testimony of RLO officials. There is no other record support of any kind for this broad claim. RLO takes an interest in the inventions of all its clients (Wood, Tr. 6744). It is unrealistic to assume that any significant number of clients have successfully licensed inventions partially owned by RLO without RLO having some knowledge of this fact and participating in the rewards. Beyond the fact [100] that RLO has been unsuccessful in licensing inventions which indicates its total services are of little or no value to its clients, the individual services rendered by RLO are of little or no value to clients.

1. Preliminary Product Research

196. The preliminary product research conducted by RLO consists of retaining an independent contractor to conduct a search of the Patent Office files. The researcher is paid from \$5 to \$8 per search, plus costs for copies, postage and photocopying (Finding 11; CX 2601S). Donald R. Dunner, a patent law expert, testified that the usual patent search requires a minimum time of four to five hours (Tr. 3276-77).

197. Complaint counsel did not call as a witness any patent researcher employed by RLO, and no evidence was introduced to

¹¹ Respondents contended during the trial that some clients were motivated not necessarily by money, but by matters of pride in obtaining a patent or in solving a problem; however, it is manifest that the primary and overriding consideration of RLO clients was the desire to make money (Dunner, Tr. 3269; Goldscheider, Tr. 5238; Udell, Tr. 8426).

establish the contractual obligations undertaken by a researcher retained by RLO. The record establishes that a patentability search is "essential" prior to filing a patent application (Dunner, Tr. 3277). It would appear that an adequate four or five hour patent search is not likely to be accomplished for \$5 to \$8. Moreover, there is substantial evidence that the Patent Office search conducted on behalf of RLO is inadequate. Several witnesses in this proceeding testified that there were usually only five or six, or less patents located in the patent search (Coyle, Tr. 1514, 1602, 1605; Winter, Tr. 1710; Switkin, Tr. 1782; Gorman, Tr. 2375-77; Salemi, Tr. 2451; Lart, Tr. 4504; Lean, Tr. 8193-94). Richard S. Shreve, a patent attorney employed by RLO, testified that the patent searches he saw were poor (Tr. 2871-72). In fact, the Preliminary Product Research Agreement does not promise a patentability search, it is called preliminary product research to give the client "the benefit of a comparison with other developments which have taken place in this field" and to "provide valuable information about some of the inventions which have already been developed in this field" (CX 96).

198. After the preliminary product research results are returned to RLO, such results are either mailed to the client or shown to the client for the client's evaluation — "this research [is] for the [101] purpose of providing [the client] with the benefit of personally comparing and evaluating" the client's idea or invention "with respect to such related U.S. patented inventions as may be located through such research" (CX 96). The patents are spread out in front of the client without any explanation (Bucko, Tr. 4366). Mr. Dunner, the patent law expert, testified that sending patent copies to a layman was "irrelevant"; uninformed persons are incapable of making informed judgements about patentability (Tr. 3247).

199. The record is clear that RLO does not furnish the client with a patentability report or evaluation and the patent attorney retained by RLO does not furnish a patentability report (Findings 86-91). Further, the client receives no face-to-face consultation from the patent attorney retained by RLO. The first time an RLO client even knows the name of the patent attorney is when the client receives *from RLO* the patent application which is to be signed by the client and *returned to RLO* (Dicks, Tr. 885-90; Coyle, Tr. 1552-53; Duber, Tr. 4221; Bucko, Tr. 4356; Peska, Tr. 7600; Lean, Tr. 8202-03). Mr. Sears, a Patent Office official, testified that clients are best served by having a face-to-face interview with the patent attorney (Tr. 1197; see also, Dunner, Tr. 3283). He further testified that the inventor "to be served in a proper manner," should receive an appraisal of patentability from counsel (Tr. 1090). Mr. Dunner, a patent law

expert, testified that he always gives clients a patentability opinion, usually a written opinion (Tr. 3281, 33¹/₄). Thus, RLO clients do not receive an adequate preliminary patent search, do not receive a patentability report, and do not have personal consultation with the patent attorney.

2. *Patents*

200. Complaint counsel contends RLO's record in obtaining patents for its clients is far below the national average (CPF, pp. 667-672). The overall percentage of patent applications allowed to issue by the Patent Office as patents is approximately sixty-six percent (66%) (CX 3002, p. 7). [102]

201. Complaint counsel contend that RLO has filed at least 3,000 patent applications since 1967, but that RLO has recorded only 590 assignments of patents since 1968 (about 20% issuance rate) (CX 2000). Complaint counsel further point out that in 1974 RLO clients obtained 217 patents whereas 1,498 clients entered into development contracts (about 14.5% issuance rate) (CX 2601); in 1975, 271 patents were issued to RLO clients whereas 1,585 clients entered into development contracts (about 17% issuance rate) (CX 2601D-E). RLO contends more than 700 patents were issued to its clients since 1972 (RRF, p. 75). There is no clear figure of the number of patent applications filed in any one year and a corresponding figure showing the resulting patents issued from those specific applications. Likewise, the number of clients that declined to make payments called for in the development contract or declined to proceed with their patent application because of the additional fees that were required is not known. Therefore, the correct statistics of patents issued compared to patent applications filed cannot be conclusively resolved on this record; however, such a determination is not necessary.

202. The mere fact a patent issues is of little value to an RLO client. The record establishes that many patents that issue are commercially worthless, particularly because the subject matter covered by the patent specifications or claims is too narrow to provide any significant commercial protection (Sherman, Tr. 693, 719; Dunner, Tr. 3246; Lang, Tr. 3400-01; Yates, Tr. 4621; Cx 3096). The fact that patent pending status has been obtained for clients and the fact that actual patents have issued have had no appreciable effect on RLO's success in obtaining monetary benefits for its clients. Therefore, the number of patents issued to RLO clients contributes little to the measure of value of RLO's services to its clients.

3. *Marketing*

203. RLO does not give its clients' ideas or inventions any evaluation as to marketability (Findings 92-107). Mr. Shreve, a patent attorney retained by RLO, testified that as to his *own* [non-RLO] clients, [103] he will never file a patent application unless it can be shown there is a market for the invention (Tr. 2872). Mr. Dunner testified that he "absolutely and always" counsels his small, unsophisticated clients about marketability and the small chance they have of ever making money on their invention (Tr. 3260-61).

204. Dr. Gerald G. Udell, Associate Professor of Marketing and Director of the Experimental Center for the Advancement of Inventions and Innovations at the University of Oregon ("Innovation Center"), testified that the traditional inventor lacks the necessary expertise to make a marketability evaluation of his idea or invention (Tr. 8359-60).

205. RLO rejects only a very small percentage of the ideas or inventions presented to it and such rejections as are made are not based on a criteria of marketability (Finding 105). The policy of RLO is to place every idea or invention through the RLO "development" and "introduction" procedures without any substantive evaluation of any kind:

* * * * *

You just kind of throw it into the ring and see what comes out (Howard, Tr. 7552; see also, Winter, Tr. 1680).¹²

206. Without any adequate screening and evaluation process, little ultimate success can be anticipated. Placing every idea or invention presented to RLO through routine marketing procedures is of little or no value to clients. The record establishes [104] that such marketing procedures actually have an adverse impact on those clients' ideas or inventions that may have merit. Mr. Lang, the president of an organization which specializes in new product marketing and development, testified that you have to have test data to support a claim that a market exists for a product— "[Y]ou are never going to sell anything unless you can get through and be heard with credibility" (Tr. 3406-07). Professor Udell testified that placing

¹² RLO does not have a procedure whereby new clients' inventions are checked against files of past clients' inventions for possible duplication or a determination of feasibility. One former Account Executive testified that he processed many inventions like a "toothbrush with the toothpaste in the handle," dog feces pickers, toothpaste dispensers, automatic jacking systems on cars, hoop type toys, people who were trying to emulate the success of the "Hula-Hoop" (Duber, Tr. 4227).

in the channels of distribution unevaluated ideas is a highly ineffective approach to marketing:

...The problem is that if ideas are, let's say, put into the marketplace without a previous analysis or evaluation of the marketability of that idea, you have the problem that the channels become clogged with ideas that lack feasibility.

This, then, in turn raises the search cost to the corporation, and you get static in the channels of distribution and it results in a highly ineffective approach to marketing the idea because of the cost involved in searching through all of the ideas in order to find one good one. (Tr. 8349)

Only three percent (3%) of all ideas or inventions submitted to the Innovation Center are accepted for some sort of marketing effort (Udell, Tr. 8362-65).

207. The adequacy of RLO's actual marketing procedures is open to question. RLO prepares prospectuses which are mailed to corporations. Several witnesses criticized the contents of the prospectuses, the methods utilized in the selection of companies to receive the prospectuses, and the actual clerical processes. [105]

208. Mr. Lang, a marketing expert, was shown a group of sixteen (16) RLO prospectuses. He characterized some of the products identified on the prospectuses as being "clearly ridiculous and impossible and unworthy of the dignity of a prospectus of any kind." He further criticized the information shown on the prospectuses as utilizing "standard phraseologies and clauses" which indicate the prospectuses are not "founded on very careful definitive examination of what's involved." He found no basis for such standard statements in the prospectuses as existing facilities can be utilized to minimize tooling and production costs, materials may be varied to suit such facilities, standardization of components will minimize inventory costs, there is a growing demand for the product, and the product fills a long-felt need. Mr. Lang termed such "rote observations" intellectually dishonest and unlikely to attract the interest of the marketplace (Tr. 3419-24).

209. Another licensing expert, John S. Yates, criticized RLO's prospectuses as making too brief a disclosure of the invention and utilizing boiler plate language and disclosing inventions which lack novelty (Tr. 4642-44).

210. Mr. Vere L. Hageman, a mechanical engineer and Manager of New Product Development at National Lock Hardware Company, testified about the many prospectuses he had received from RLO

during a three-year period. One group of prospectuses, CX 2657-2726, was received during late 1974 or early 1975 (Tr. 1219). He criticized the inventions reported in the prospectuses as not relevant to the business of his corporation. He further stated that some inventions were "hilarious"¹³ (Tr. 1221), some were "technically impractical, maybe even bordering on stupid" (Tr. 1230); perpetual motion mechanics, obviously old ideas, "three that were the same idea from three different inventors" (Tr. 1228), some were silly or incomprehensible: [106]

[CX 2693A, Animal Sanitation Bag] They were going to hang a bag at the back end of a dog to catch the waste. . . . To me, it was rather impractical. . . [CX 2616A, Robot Sounds Efficiency Unit] . . . I can't comprehend what the man is talking about in it at all. I can't understand it. . . (Tr. 1231)

211. Mr. Robert Goldscheider, a marketing expert, testified about several RLO's prospectuses he was asked to examine:

* * * * *

I believe that none of these prospectuses, not a single one can be given serious credence by a serious businessman. They are superficial. They are incomplete. They are uninformative on truly meaningful points, and I'm seriously doubtful a market even exists for any of these things as set forth in these (prospectuses) . . . So I don't want to make any personal remarks about the originators of these, but I must honestly say that I don't find any of them to be remotely serious in a realistic sense. (Tr. 5260-61; see also, Tr. 5302)

212. The methods used by RLO in determining which corporations to send invention prospectuses to are also questionable. As Mr. Udell testified:

* * * * *

. . . if someone is indiscriminately submitting ideas to corporations on the basis of broad industry classifications, use of the Thomas' Register, for example, where there hasn't been an attempt to qualify the firm there, that becomes much more ineffective in terms of technology transfer. (Tr. 8374) [107]

213. Bernard J. Murphy, a patent agent with Ingersoll-Rand Company, received approximately 350 to 400 prospectuses from RLO since 1972 (Tr. 384), and testified only about one in fifteen had any pertinence to Ingersoll-Rand's business (Tr. 398J).

214. The mailing of information about new products or inventions to industry in the form of prospectuses and circulating information about such items in publications is one accepted method

¹³ Mr. Hageman also stated: "it began to dawn on me that it really is not so funny, because it seemed to me that unsophisticated inventors were paying money for ideas that — for developing and promoting ideas that obviously on the face of it had to me, in my opinion, no merit" (Tr. 1223).

of marketing new ideas or inventions. This procedure has been utilized by organizations such as the National Aeronautics and Space Administration (RX 612-13) and General Electric Company. However, RLO's mailing of prospectuses utilizing boiler plate statements and containing brief, inadequate descriptions of inventions which have not been evaluated and which lack feasibility is of little or no value to its clients.¹⁴

215. Some RLO clients followed up on companies to which RLO had mailed prospectuses. One client checked *Thomas' Register*, the reference used extensively by RLO to compile lists of manufacturers (Dicks, Tr. 7821, 7978-79), and found that some companies' product lines were not compatible with his invention, erroneous addresses were found, some firms were out of business, and other company names had been misspelled (Guerard, Tr. 3200-02). Another client checked the three lists of corporations to which RLO mailed his prospectuses and found firms listed that were out of business, one firm which never received any information from RLO, incorrect addresses for companies, non-manufacturing organizations, duplications of firms on the three lists, and one address that, upon checking, turned out to be a vacant lot (Shepard, Tr. 1929-35). Another client surveyed the companies to which RLO mailed prospectuses and found that one company had been out of business for years (Syversen, Tr. 2999, 3001). [108]

216. RLO has apparently upgraded the quality of its prospectuses in recent years (Dicks, Tr. 7818, 7821), and also utilizes other RLO publications such as *Innovation World* and *New Product Bank* to inform industry of its clients' inventions (RX 739-747). One RLO employee, Mr. Eugene Howard, who served briefly as RLO's Manager of Invention Licensing, began a review of RLO clients' inventions that were on hand in an unsuccessful attempt at marketing them (Tr. 7472, 7479, 7486, 7510-11, 7513). These changes have not, however, replaced the practices challenged in this proceeding or gained monetary rewards for RLO clients.¹⁵

C. RLO's Refund Policy

217. RLO's policy for making refunds to clients prior to 1973 was on a case-by-case basis. Since 1973, RLO's policy has been full refunds where ideas or inventions have been rejected or overpayments made; refund requests where work is in progress are

¹⁴ RLO also occasionally gains local publicity for its clients (see RX 116). These publicity items, while perhaps fulfilling some vanity needs, are of little or no value to RLO clients.

¹⁵ CX 2657-2726, prospectuses received by National Lock Hardware Company, most of which were received in late 1974 or early 1975, were criticized by several witnesses (Findings 208-211), indicating the inadequacies of RLO prospectuses as of those dates.

considered for pro-rata refund; no refunds are made where work has been partially completed but is delayed because of the client's lack of cooperation; and, where work has been completed, refunds are generally denied (CX 2600A-T).

218. During the period January 1976 through October 1976, subsequent to issuance of the complaint herein, RLO made eighty-six (86) partial or full refunds, totaling \$14,163. All but nine (9) refunds were for Preliminary Product Research Agreements (Dicks, Tr. 7823-29). Summaries of refunds made in years prior to 1976 were apparently available but not offered in evidence (Dicks, Tr. 7827).

219. As is evident from RLO's statement as to its refund policy, refunds where work has been completed are generally denied. Thus, RLO makes no refunds on the basis that its services are of little or no value to its clients. [109]

XII. ACTIVITIES OF INDIVIDUAL RESPONDENT LAWRENCE PESKA

A. Responsibility for and Control Over RLO's Challenged Practices

220. In 1964, prior to RLO's incorporation, Lawrence Peska was employed by Raymond Lee and National Patent and Trademark Company (which subsequently became an affiliate corporation of RLO). When RLO was incorporated in January 1967, Peska became the vice president of RLO and of its subsidiaries and affiliates. Peska's employment in this capacity continued until November 1972, when he voluntarily left RLO (Peska Ans. ¶1; ¶3 Peska Affidavit Attached to "Motion of Respondent Lawrence Peska for Summary Decision," dated October 31, 1975; CX 374B, ¶7; CX 2601Q; Peska, Tr. 4780, 7100).

221. Peska's functions did not immediately change with RLO's incorporation in 1967 and his being named RLO's vice president (Tr. 4783). His duties did, however, become more defined as the company grew (Lee, Tr. 5077, 5080; Peska, Tr. 7100). While an employee and vice president of RLO, Peska's duties included:

... primary responsibility for sales and for communications between the Corporation and all others. He had direct day-to-day responsibility for the Corporation's operations, particularly sales, purchasing, administrative management, personnel, general procedures, advertising and sales promotion (CX 2601Q, ¶15).

As vice president of RLO, Peska was "second-in-command as to all phases of [RLO's] business" (CX 374C), and he devoted his "entire working time to [his] duties as an officer of [RLO]" (CX 377A; Peska, Tr. 4811). In 1972 when Peska's RLO employment terminated, his

major area of responsibility was for public relations with both RLO clients and the public (Peska, Tr. 4846, 7100-01, 7306-07; Traube, Tr. 5138). [110]

222. During his employment at RLO, Peska met with Raymond Lee on a daily basis to discuss the operations of RLO including advertising, public relations, fees charged clients for various programs, salaries and performance of RLO employees, and to assist Lee in determining the direction the company should take (Peska, Tr. 4861, 4879-80, 7110, 7116, 7135-36; Lee, Tr. 5083).

223. Peska established corporate policy in those business areas for which he was responsible and he functioned "substantially autonomous within those responsibilities" (Lee, Tr. 5085-86; Peska, Tr. 7307).

224. At various times during his employment at RLO, Peska:

- (1) sold RLO services to clients (Peska, Tr. 4822-23; Lee, Tr. 5079);
- (2) had authority to hire and fire account executives and participated in their training (Peska, Tr. 4842, 4878, 7124-26, 7302; Lee, Tr. 5070, 5079-80, 5084);
- (3) had responsibility for marketing or introducing RLO clients' inventions to industry (Peska, Tr. 7667; Lee, Tr. 5079);
- (4) made trips around the country to see RLO clients (Peska, Tr. 7126-27);
- (5) participated with the patent attorneys and Lee in adding embellishments to RLO clients' inventions (Peska, Tr. 7102);
- (6) had responsibility for administrative matters including the flow of correspondence and fulfillment of requests for inquiry material (Peska, Tr. 4793-94, 7116, 7124); [111]
- (7) helped draft RLO's contracts and form letters (Peska, Tr. 7302);
- (8) helped update the materials sent to potential RLO clients (Peska, Tr. 7303-04); and
- (9) signed or authorized others to sign his name to contracts and correspondence to clients and public officials (CX 131, 162, 165, 174-75, 179, 348A-B, 619, 881, 1030A-B, 1034,

1036A, 1071-73; Peska, Tr. 4798, 4826-27, 4973-74; Lee, Tr. 5080, 5082).

225. In addition to the above enumerated activities, Peska had extensive responsibilities in the advertising area throughout his employment at RLO. He had primary responsibility for creating and placing advertisements in various media either as vice president of RLO or through his solely-owned advertising agency, LPA (Peska, Tr. 4783-84, 4829, 4831-34, 4970, 7304-05; Lee, Tr. 463, 5077-78, 5085, 5087-88; Traube, Tr. 5138-89). Peska was responsible for the promotional brochures distributed by RLO to potential clients (Peska, Tr. 4786, 4788, 7143, 7303). News releases of clients inventions were also within Peska's area of advertising responsibilities (Peska, Tr. 4863; Julien, Tr. 8134). Starting in approximately 1970, Peska served as Editor of "Innovation World," a publication developed to keep in touch with industry, and was responsible for its preparation and coordination of its printing (Peska, Tr. 4897-4900; Julien, Tr. 8134).

B. Peska's Current Responsibility for LPA Practices

226. Individual respondent Lawrence Peska is, and throughout LPA's existence has been, the President and sole stockholder and director of LPA (CX 2607B; Peska, Tr. 4780, 4931-33, 7093, 7175-76). By 1972, LPA's work was almost exclusively for RLO (Peska, Tr. 4846-48). When Peska's employment at RLO ended, the business of LPA changed from that of an advertising agency to being an idea promotion firm (Peska, Tr. 4928-29, 7092-93, 7146, 7176-77). As of November 1972, respondent Peska's duties [112] at LPA were primarily of an administrative and supervisory nature (CX 2607B). From November 1972 to July 15, 1975, the business of LPA was "[p]rimarily the development, introduction and marketing of new products" (Peska, Tr. 4929-30; CX 2607B).

227. LPA and RLO have been and are direct competitors in the idea or invention development business (Peska, Tr. 4953-54, 7608; sworn affidavit attached to "Motion of Respondent Lawrence Peska for Summary Decision" dated October 31, 1975, ¶5). Respondent Peska testified that LPA and RLO compete in that both firms are "looking for inventions and offering services to inventors" (Tr. 7648).

228. In the course and conduct of its business, LPA has engaged in interstate commerce. Since 1972, LPA has solicited clients and has sold its services throughout the United States through various interstate media including newspapers, magazines, use of the mail, long distance telephone calls and inventors seminars (Peska, Tr.

4946-47; CX 2232, 2234, 2236-37, 2240, 2245-46, 2254W-X, 2378A, 2434I, 2595, 2615-17, 3000-01, 3003A-E, 3004A-D, 3005, 3034W-X; RPX 15). Promotional literature distributed to clients and potential clients list regional LPA offices throughout the United States and international LPA offices in Canada and Australia (CX 2254Z, 2613C, 3023H, 3034Z; RPX 15-19).

229. Sales generated by LPA's promotional activities have been and are substantial. For example, LPA's gross sales for 1974 were approximately one and one-half million dollars (Peska, Tr. 4938).

230. LPA's methods of dealing with clients followed a pattern similar to those of RLO. The business forms used at LPA in 1973 were written by respondent Peska and were similar to those used by RLO (Peska, Tr. 7603). From 1973 through 1976 services offered to clients such as a preliminary product search, development and marketing programs, and a Canadian Patent and Marketing program were identical or similar to services offered by RLO (Schwartz, Tr. 4040-41, 4046-47; Duber, Tr. 4235, 4254; Peska, Tr. 4934-37, 4963-64, 7607-08; Traube, Tr. 5181-83, 5183-87; CX 2259A-D, 2261A-C, 2264A-B, 2265A-B, 2278-79, 2282A-C, 2284A-C, 2299A-B, 2300, 2302A-D, 2312, 2314A-B, 2349, 2351A-C, 2425, 2427D-F, 2486I-J, 2488, 2496A-C, 2609-10, 2611A-C, 3921A-H; RPX 16). In 1976, LPA changed [113] the programs it offers to clients to eliminate patent procurement services but continues to offer development and marketing programs to inventors (Peska, Tr. 7176-77, 7180-86, 7211, 7609).

231. In formulating LPA's business practices, respondent Peska adopted many of the methods of operation employed by RLO during his tenure as RLO's vice president which are challenged in this proceeding. For example, LPA:

(1) has represented, directly, indirectly, and by implication, that it actively and successfully introduces its clients' ideas or inventions to industry when only approximately 25 licensing agreements have been executed on behalf of LPA's 4100 clients and only 7 of these clients have earned money in excess of amounts paid to LPA (CX 2254B, 2305F, 3021A-B, 3023F, 3034B; RPX 15, 17, 19, 20A; Hudak, Tr. 2733; Peska, Tr. 4955-56, 7211-13; Traube, Tr. 5192);

(2) has represented, directly, indirectly, and by implication that it provided a fair, adequate and thorough appraisal of the patentability or merit and marketability of LPA clients' ideas or inventions when no such appraisal or evaluation was done (Torre, Tr. 2595-97; Levine, Tr. 2661-63, 2667; Hudak, Tr. 2711;

Amins, Tr. 3730; Peska, Tr. 7640-42; CX 2259A, 2261A-B, 2264A-B, 2265A-B, 2299A-B, 2300, 2302B, 2305B, 3023B-G; RPX 16-17);

(3) has represented, directly, indirectly, and by implication that it will substantially develop or technically refine LPA clients' inventions or ideas when no development or refinement has been done (Bradner, Tr. 2650; Hudak, Tr. 2719; Heiner, Tr. 3534; CX 2282A-C, 2305F, 2314A-C, 2351A-C, 2427D-F, 2496A-C, 3003A, 3023F; RPX 17, 19); [114]

(4) has, without authorization, used the names, titles, photographs and quotations of prominent public figures in its promotional literature which use could create a false impression that such individuals had endorsed LPA or its services (Garelik, Tr. 2754-57, 2764; Javits, Tr. 4450, 4454-56; Peska, Tr. 4807-09, 7275; CX 2201-03, 2344H, 2580-05, 3029-32, 3103, 3105, 3107; RPX 3-11).

XIII. RLO'S CURRENT TRAINING AND SUPERVISION OF ACCOUNT EXECUTIVES

232. RLO contends that, after the termination of Peska's employment in November 1972, substantial improvements were made in RLO's business operations including its method of hiring, training and monitoring Account Executives as well as its advertising (RPF, p. 12; Julien, Tr. 8056-57, 8058-59, 8061-63; Friedman, Tr. 6222-54, 6257-58 (Jan. 14, 1977); Salamone, Tr. 6647-51, 6653-55, 6658-59, 6661-64).

233. Since September 1, 1973, Mr. Sifton (Si) Friedman, in his capacity as supervisor of RLO's Sales Department, has been responsible for the training and supervision of all RLO Account Executives (Friedman, Tr. 6219, 6271).

234. Mr. Friedman described the training RLO new Account Executives currently receive as follows:

A. The training for a new account executive is very intensive and takes anywhere from two weeks to possibly three, and this is a one-on-one procedure, day by day with myself and that trainee covering all aspects of our proposals, how we must relate to the prospective clients. He hears me. I hear him and he's constantly monitored throughout the process until he gets to know everything. [115]

Q. Is there special training facilities at your offices for these purposes?

A. Yes. We have a special room set aside for that purpose and in there we have a telephone facility where both sides of the conversation would be heard (Friedman, Tr. 6222).

235. Testimony of present and former Account Executives trained by Mr. Friedman as to the length of training received was in conflict. Mr. Pion testified he received one full day of training and was watched closely for two to three weeks (Tr. 6928-29); Mr. Pedersen testified he received three weeks of training (Tr. 5955-56); Ms. Bartlett testified that after four days of training she was given her own desk, but that training basically continued over the first two weeks (Tr. 6961-63); Mr. Peckham testified he received ten days to two weeks training (Tr. 7016-17); Mr. Duber testified he handled calls after a day and a half of training, but that Mr. Friedman listened to him for about a week (Tr. 4192); Mr. Glass testified he received approximately three days of training (Tr. 3814-15).

236. Mr Friedman testified that in March 1975, he wrote RLO's "Glossary of No-No's" which was thereafter distributed to all Account Executives (Tr. 6255-57 (Jan. 14, 1977)). This glossary listed words, statements and innuendos which Account Executives were prohibited from using during their conversations with clients and potential clients of RLO (CX 2602C-D).

237. Phrases prohibited in the "Glossary of No-No's" which relate to representations challenged in this proceeding include, but are not limited to:

* * * * * *

We APPRAISE or give an APPRAISAL

* * * * * *

We EVALUATE or give an EVALUATION

* * * * * *

We think it is MARKETABLE or PATENTABLE or PROMISING. [116]

* * * * * *

We are PATENT ATTORNEYS or have PATENT ATTORNEYS ON
STAFF

* * * * * *

The fee stated (development program) is YOUR ENTIRE COST. (CX
2602D)

238. Although current RLO Account Executives testified they had received the glossary and were instructed to adhere to its prohibitions (Pedersen, Tr. 5989-90; Bartlett, Tr. 6962), former Account Executive Paul Duber testified as follows:

Q. What use did you make of this glossary of no-noes for account executives, if any?
(Tr. 4196)

A. Well, it was read over and it was never enforced. It became, actually it became a joke amongst the account executives. It was never enforced by Si Friedman who was our direct superior, or anybody else. (Tr. 4197)

(See also, Duber, Tr. 4337, 8307-09; Glass, Tr. 3881-82, 3916-17; Schwartz, Tr. 4022).

239. Prior to September 1975, RLO's only means of monitoring some Account Executives' telephone conversations with clients and potential clients "was in the form of extension telephones" (Friedman, Tr. 6223; Julien, Tr. 8112-15, 8148-49). Former Account Executives testified that during their employment at RLO they had no knowledge of the existence of any monitoring system or equipment (including a system of extension phones), and were never told their conversations with clients had or would be monitored (Coyle, Tr. 1534-35, 1649; Glass, Tr. 3812, 8446-47, 8451-52; Peska, Tr. 7277, 7279; Duber, Tr. 4188, 8301-02, 8331-32, 8339; Winter, Tr. 8167-68). [117]

240. In September 1975, RLO, in connection with moving into different quarters, installed a sophisticated telephone monitoring system (S. Friedman, Tr. 6224-26, (January 14, 1977); Julien 8111-15; CX 625). By means of this system, Friedman can now monitor, on a random basis some of the telephone conversations of RLO Account Executives with clients and potential clients (Friedman, Tr. 6225-27, 6275).

241. Current RLO Account Executives who were hired after installation of the monitoring system testified that they were informed of the existence of such a system and were aware that such monitoring was still taking place (Pedersen, Tr. 5959; Pion, Tr. 6903, 6910; Bartlett, Tr. 6963-64; Peckham, Tr. 7019, 7074).

242. While proper training, a glossary of "No-No's" and telephone monitoring are practices which could have a desirable impact on RLO's operations, the record does not indicate that such programs were rigorously enforced by RLO, or adhered to by Account Executives. Their effect on RLO's total operations were minimal (Lean, Tr. 8187-8293). Strict adherence to a glossary of "No-No's" and constant telephone monitoring of Account Executives, at best, would serve to eliminate only the most direct and flagrant misrepresentations which this record demonstrates RLO has made to potential clients. [118]

CONCLUSIONS

A. FACTUAL SUMMARY

The findings of fact set forth in detail the business operations of

RLO, and the section of those findings discussing the value of RLO's services to its clients is a summary of some of the most pertinent facts of record. Briefly, RLO is engaged in the business of providing patenting, development and marketing services to persons with ideas or inventions for new products (Finding 5). The complaint challenges the statements and representations which RLO makes regarding its business and professional qualifications and the services it will provide to clients, the services RLO actually renders to its clients, and the value of such services to its clients.

Individual respondent Raymond Lee was the founder of RLO and since its incorporation in 1967 has been its sole stockholder, President and Director. In such capacity he has been primarily responsible for RLO's business operations, formulating, directing and controlling its acts and practices (Finding 3).

Individual respondent Lawrence Peska was, until November 1972, Vice President of RLO, and second-in-command to Lee. In this capacity he was instrumental in formulating, directing and controlling the acts and practices of RLO (Finding 4). The acts and practices challenged in this proceeding were implemented at RLO during Mr. Peska's tenure as Vice President and have not changed meaningfully since his RLO employment terminated. Consequently, references to RLO's practices in this decision apply to practices for which Mr. Peska was in large part responsible and his current disassociation does not relieve him of any individual liability he has for the formulation and adoption by RLO of the challenged acts and practices. After Peska left RLO, he immediately commenced his own invention development and marketing business patterned generally after the RLO operation (Findings 226, 230-1).

From 1962 until 1967, respondent Raymond Lee operated as a sole proprietorship under the name Raymond Lee Organization (Finding 5). The proprietorship's operations were small, the staff consisting of Lee, [119] Peska, and two other employees (Peska, Tr. 7096). In 1967 RLO was incorporated. By 1972 there were 40-50 employees at RLO (Peska, Tr. 4819), and in 1975 there were approximately eighty-five employees (Lee, Tr. 459-463; Julien, Tr. 8152-53; CX 2790-92). Sales receipts have exceeded one million dollars for the past several years (Finding 23), and in 1975 over 5,000 clients contracted for various RLO services (Findings 12, 16). A substantial percentage of RLO's business operations is conducted through the mail and over the telephone (Finding 24).

RLO relies heavily on advertising, primarily in newspapers, magazines and yellow pages of telephone directories to initially contact potential clients (Finding 6). Potential clients who respond to

advertisements are mailed or presented with an Inventors Information Kit consisting of numerous brochures, flyers, and other promotional materials, including a Record of Invention form. The potential client is urged to record his idea or invention on the Record of Invention form and promptly return it to RLO for examination for the purpose of receiving RLO's "comments and suggestions for the international development and introduction of this invention to industry" (CX 50, 52, for example). Salesmen (termed Account Executives by RLO) follow-up by telephone and CALL-TELEGRAMS to encourage return of the Record of Invention form (Findings 8, 35; CX 2813A).

If the Record of Invention form is returned to RLO, Account Executives offer potential clients the services of RLO. First, preliminary product research is urged to provide information about some inventions that have already been developed in the field. Copies of United States patents found during this patent search are to be furnished the client along with RLO's "confidential findings" and its "recommendation" for the development of the invention, and arrangements by which RLO would accept a participating interest in the invention (Finding 41). The potential client is advised that this preliminary product research should be conducted at once as time is important (Findings 10, 61). [120]

If the potential client accepts the Preliminary Product Research Agreement, within a few weeks the client receives, either through the mail or in person at RLO's headquarters, copies of approximately five or six United States patents located during the research, together with a letter development contract outlining RLO's procedures for developing and introducing to industry the client's idea or invention (Finding 42). The letter states that for a specified fee and the assignment of a twenty percent (20%) interest in the client's idea or invention RLO will technically develop and refine the idea or invention, retain a patent attorney to prepare a patent application on the idea or invention, and proceed immediately to develop the idea or invention and introduce it to industry (Findings 13, 65, 119; CX 100).

Clients who receive the research results and the development contract in the mail are contacted by an Account Executive, usually by telephone, to encourage the immediate execution of the contract and its return to RLO (Finding 13). Clients who visit the RLO offices in New York are given the research results and the development contract in person by an Account Executive.

After execution of the development contract and payment of the specified contract fee, RLO prepares drawings of the idea or

invention which, after approval by the client, are forwarded to the patent attorney retained by RLO for preparation of a patent application (Finding 120). As soon as patent pending status is obtained through the filing of the patent application,¹⁶ RLO prepares a prospectus describing the invention which is mailed to approximately one hundred industrial concerns and organizations (Findings 14, 207). Descriptive paragraphs of some clients' inventions are included in RLO publications entitled *Innovation World* and *New Product Bank* which are circulated to industry (Finding 216). RLO also, on occasion, generates some local publicity for its clients (CX 1115; RX 116). [121]

If a corporation, after receiving an RLO client's prospectus, requests further information about the idea or invention, RLO will respond to the corporation's inquiry. On occasions when clients complain about the lack of response from corporations, RLO will circulate prospectuses to additional corporations (Syverson, Tr. 2986, 2993-94).

RLO has had very limited success in licensing or selling the ideas or inventions of its clients to industry (Findings 20, 58, 194). RLO presently advises potential clients in the State of California, pursuant to statutory requirement, that only three of thirty thousand clients have received more in royalties than they have paid RLO in fees (Finding 22).

B. Complaint Allegations

1. *Respondents Fail To Provide a Fair, Adequate and Thorough Appraisal of Their Clients' Ideas or Inventions and Do Not Successfully Introduce Such Ideas or Inventions to Industry*

Complaint Paragraphs Seven and Eight, subparagraph Five, allege that respondents will successfully introduce, promote and license RLO's clients' ideas or inventions to industry, but that respondents, in a significant number of instances, do not provide this service to clients. Complaint Paragraphs Seven and Eight, subparagraph Six, allege that respondents represent they will, but, in a significant number of instances, fail to provide a fair, adequate and thorough appraisal of the patentability or merit and marketability of their ideas or inventions prior to the time potential clients contract for RLO services. Representations that RLO will successfully introduce clients' ideas or inventions to industry are interrelated with

¹⁶ At this point the client is offered the Canadian development program. About 10% to 15% of the clients who accept the United States development program also accept the Canadian program (Finding 17).

representations that RLO will provide a fair, adequate and thorough appraisal of clients' ideas or inventions and, considered together, allegations relating to these representations constitute the central issue in this proceeding.

Respondents have represented through advertisements, brochures, letters, and a course of dealing that they will develop an inventor's idea or invention and introduce [122] it to industry. These representations include statements that RLO is highly knowledgeable and experienced in the field of invention developing and marketing, that it is held in high esteem by clients, corporations and high public figures, that it has broad access to corporations who are actively seeking new products through RLO, and that some of its clients have been highly successful (Findings 44-52). RLO's advertisements, brochures, letters and course of dealing also represent to clients that the client will need a specialist to evaluate the idea or invention, and that RLO, which has that experience and expertise, will examine the potential client's idea or invention and, if it is acceptable to RLO, suggest a procedure for its development and commercialization (Finding 59).

RLO's course of dealing is very significant in creating the impression in the client's mind that his idea or invention has been evaluated by RLO and thus has a good chance of being successfully marketed. First, through advertisements and brochures, the client has been impressed with RLO's corporate reputation. The Record of Invention form which the potential client is requested to complete and return to RLO states that RLO will examine the idea or invention for the purpose of submitting a suggested procedure for its "international development and introduction to industry" (Finding 60; CX 50). It is represented that RLO will promptly inform the potential client if the idea or invention cannot be *accepted* by RLO.

Once the Record of Invention form has been returned to RLO, the potential client receives a letter stating that RLO has completed its examination of the idea or invention and is recommending that the client authorize preliminary product research which RLO will perform at a modest cost and which research should be commenced at once (Finding 61). Account Executives contact potential clients and make various statements to encourage execution of the agreement, such as RLO desires to have preliminary research conducted before making recommendations as to the development procedure to be followed, or the idea or invention is interesting or feasible, or it is a good investment (Findings 63-64). [123]

Once the preliminary research is completed, the client is then sent a development proposal in the form of a personalized letter, together

with copies of United States patents. The client is advised that the preliminary research has been completed and RLO is ready to accept a twenty percent (20%) interest in the invention and proceed immediately to have the invention patented and developed for sale to industry (Finding 65).

Account Executives, salesmen who receive a commission on the sale of RLO services, contribute to the client's impression that the idea or invention will be successful (Finding 53). They testified in this proceeding that you have to indicate to the client that there is a good opportunity for success, otherwise, they are not going to spend the money, necessary to obtain RLO services (Findings 54, 66-69, 71).

RLO's advertisements and brochures create the aura that RLO is experienced, knowledgeable, and successful in the development and introduction of inventions to industry, with the respect and esteem of high public officials, and the gratitude of many clients and corporations who have been assisted by RLO. The procedure whereby a potential client's idea or invention is examined and accepted by such a corporation creates the impression it is a worthwhile invention. This impression is heightened by the recommendation that a patent search be performed and, after completion of the search, the fact that RLO will accept an interest in the idea or invention and will seek a patent on it. One former Account Executive testified that if RLO makes a proposal, it must convey the impression the idea or invention is feasible and marketable (Winter, Tr. 1754-57).

In sum, RLO's entire advertising representations, oral representations by Account Executives, and its method of operation are designed to create in the minds of potential clients the definite understanding that their invention has been examined and studied by a competent, knowledgeable and experienced organization who has determined that the idea or invention is worthy of presentation to industry and that there is a good chance it will be successful. [124]

RLO contends its written agreements with clients are clear on their face as to what RLO will and will not do, and that RLO clients who testified in this proceeding read and understood the contracts (RPF, pp. 36-40; RRF, p. 63).¹⁷ RLO also contends it agrees to

¹⁷ One RLO client testified about the RLO contracts as follows:

"... I have to admit that I didn't really pay much heed to the reading of it.

• • • • •
 "Well, I relied on their integrity. They had advertised so copiously and they had so many brochures of selling. They had photographs of various clients of theirs who have written in glowing terms saying that they had received excellent treatment and were very satisfied. So on the basis of those rather than paying too much heed to all this. . . I went ahead. . ." (Mullen, Tr. 1887-1888)

"introduce an invention to industry (by methods it describes in plain, easy to understand words) and to 'seek opportunities to negotiate' " for sale or licensing of the invention (RPF, p. 26); that RLO delivers "market exposure" (RPF, pp. 40, 54); that it does not appraise clients' inventions as to patentability or merit and marketability, as it would be foolish, ineffectual and, indeed, deceptive for RLO to do so (RPF, p. 36).

The statement in the RLO preliminary research agreement that the RLO proposals "shall not be construed as a recommendation based upon an evaluation" by RLO of the client's idea or invention is contradictory to language in the letter accompanying the agreement which states that RLO "would like to suggest" a course of action, and that, following the completion of the preliminary research, the client "will receive the confidential results of our findings. . . . Our recommendation for the development of your invention, and arrangements on which [RLO] would accept a participating interest" in the client's invention (CX 96, 204). [125]

The development contract statement that the enclosed references will aid "You in your evaluation" of whether to proceed is ambiguous at best and contradictory to the entire development proposal being offered whereby RLO is willing to take a twenty percent (20%) interest in the idea or invention, retain a patent attorney to prepare a patent application and pay a proportionate share of fees agreed upon, sell this interest back to the client for \$1,000 within six months, and requests authorization from the client for RLO to proceed immediately (CX 100). The statement in the development contract that RLO cannot give assurances of financial success is also ambiguous and can be understood to convey the limited idea that RLO does not *guarantee* success, but does not inform potential clients that the financial success of RLO clients to date has been minimal (Findings 56-58, 72).

Nowhere in RLO's advertisements, brochures, or agreements is there a clear statement that RLO has not or will not evaluate the client's idea or invention, that evaluation is entirely up to the client, and that RLO is making no recommendation of any kind. RLO cannot seize upon brief, imprecise clauses in its agreements to overcome contradictory representations in the numerous direct statements made orally and in advertisements, brochures, and letters, and the contradictory implications created through its course of dealing. RLO, represented to have the expertise to advise and assist inventors, now argues that it merely promises routine market exposure to ideas or inventions of unsophisticated clients who do their own evaluation.

This proceeding is concerned with an uninformed public dealing in a highly technical area about which there is little general information available. Persons who believe they have come up with an idea or invention are particularly susceptible to the promotional tactics utilized by RLO. The obscure, ambivalent and somewhat ambiguous statements in the contracts which RLO relies upon to convey to potential clients a clear understanding of its services cannot overcome the substantial and continuing misrepresentations that RLO has otherwise made. [126]

*2. Respondents Do Not Technically Develop and Refine
Clients' Inventions*

The complaint, Paragraphs Seven and Eight, subparagraph Four, alleges respondents represent they will substantially develop or technically refine clients' ideas or inventions submitted to them, but that respondents do not render this service to clients in a significant number of instances.

RLO's advertisements, brochures and letters represent to the client prior to the signing of the development contract that RLO, an organization knowledgeable in the development and introduction of inventions to industry, will take the idea or invention all the way from an idea to placing it in proper form for presentation to industry (Findings 110, 112-116). Other representations made by RLO include a letter written by a Texas Judge which states, in part:

It is my belief, that if my product cannot be put on the market by the Raymond Lee Organization, it cannot be done (CX 47, 51).

RLO's development contract represents that RLO will:

A. . . .first technically develop and/or refine your invention, if and to the extent necessary, for the preparation of suitable illustrations, and description of the commercial features you regard most important. (CX 840; see also, CX 100, 367, 1022, 1208, 2149)

RLO contends that "the obvious focus of this provision is the preparation of sufficiently professional drawings of the consumer's invention to facilitate introduction of the invention to industry and permit the independent patent agent or attorney to use them" (RPF, p. 31; Finding 120). [127]

The language used by RLO in the development contract is of a technical nature. It is capable of being understood by ordinary persons who have read RLO's advertisements and brochures and are inexperienced in the marketing of inventions to mean that RLO will perform whatever services are necessary to make the invention

marketable to industry. RLO clients testified that they believed RLO would take the idea or invention "from the beginning to the end," "the package deal," "the whole thing," "this company took care of everything" (Findings 124-128).

RLO clients are led to believe and therefore have a reasonable expectation that the technical development and refinement of their invention will involve more than the mere preparation of drawings for use in filing patent applications and in preparing prospectuses. Accordingly, it is concluded that RLO does not substantially develop and technically refine its clients' ideas or inventions (Findings 123, 129).

*3. Respondents Do Not Disclose That Additional Fees May
Have To Be Paid by Their Clients*

Complaint Paragraphs Seven and Eight, subparagraph Three, alleges that respondents represent that no additional fees will be incurred by RLO clients after entering a development contract when, in fact, such additional fees will arise. Representations that no additional fees will be charged are impliedly made through respondents course of dealing by their failure to fully advise clients of the total fees they are likely to incur in developing their idea or invention.

RLO's sales procedure is to initially sell clients a preliminary product research contract for a fee of \$100 or more (Findings 9, 131). No disclosure is made at this time of the additional services RLO will later recommend or the additional fees which will be required for these services (Findings 131, 132). Within a few weeks, RLO presents the client with a development contract. This contract states that individual inventors "...acting on their own may find it necessary to retain various specialists such as engineers, lawyers, draftsmen, technical writers, patent attorneys, marketing [128] organizations and sales agencies, etc." Thereafter, the contract states that RLO has assembled a staff and retains, as needed, qualified independent contractors, for carrying out many of the important steps for introducing an invention to industry. RLO quotes the client a specified sum for the development proposal (Finding 133). The contract also says that RLO, which will have a twenty percent (20%) interest in the invention, will pay its proportionate share of government fees and, "if prosecution of the patent application is agreed upon, [RLO] will pay its proportionate share of those fees and costs upon which we mutually agree" (Finding 134).

The record is clear that clients are not informed of all the fees or costs which a client is likely to incur in following through on RLO's

development program which are *in addition* to the fee specified in the development contract (Findings 135-36). These costs are known to RLO and should be clearly disclosed to potential clients prior to the execution of any contract (Findings 140, 141). RLO's step-by-step approach to sales is designed to get clients involved in the invention development process without truthfully disclosing all costs which may be involved. Such a procedure is not only deceptive, it is unfair.

4. *Respondents Failed To Disclose to Their Clients That Raymond Lee and RLO Are Not Authorized To File and Prosecute Patent Applications*

Complaint Paragraphs Seven and Eight, subparagraphs One and Two and Paragraph Twelve, subparagraph Two, all relate to respondents' failure to disclose that neither RLO nor Raymond Lee are qualified or recognized to file and prosecute patent applications on behalf of RLO's clients. Use of Mr. Lee's qualifications and professional experience are also alleged to impliedly misrepresent that he is a registered patent attorney or agent.

Respondents' advertisements and brochures stress the educational and professional qualifications of Raymond Lee, Founder - President of his namesake company, the Raymond Lee Organization (Findings 142-45). Lee's qualifications in the brochures are prefaced by the word *former*, as follows: [129]

Founded by Raymond Lee, B.S.I.E., (LL.B) former:

- U.S. Patent Office Examiner
- U.S. Dept of Army Patent Advisor
- U.S. Registered Patent Attorney
- Canadian Registered Patent Agent
- Advisor to the TV series "The Big Idea."

Another brochure states:

The Founder-President of the Company, Raymond Lee, has degrees in Industrial Engineering and Law, and has had extensive experience with inventions and new products. He is a former: United States Registered Patent Attorney, Canadian Patent Agent, United States Patent Office Examiner and United States Department of Army Patent Adviser. (CX 44D, 45D, 46D)

The ordinary person, unskilled in patent matters, and not fully comprehending the requirements of practice before the Patent Office, may not appreciate the full implication of the word *former*, as used in RLO brochures. Such statements could reasonably be understood by potential clients to represent that Raymond Lee is currently a private, as compared to government, patent attorney or

agent and is qualified to file and prosecute patent applications on behalf of RLO clients (Finding 145).

RLO promotional brochures also repeatedly emphasize the high qualifications and expertise attributed to RLO's staff in respect to patents with statements such as:

Our Product Research Department will act as your Intelligence Agency . . . [to] . . . probe and study . . . the related records of the United States Patent Office. They search prior U.S. patents. . . They wind their way through Patent Office corridors often talking to Patent Office Examiners. . . [130]

Each person in our Product Research Department . . . is a specialist in his field, in some cases having been an Official Examiner in the U.S. Patent Office where he received his "basic training." (CX 44I, 45J, 46I, 2604H; see also, Findings 146-47).

These brochures are likely to create an understanding on the part of potential clients that RLO is qualified to prepare, file and prosecute patent applications. Brochures which refer to RLO retaining, as needed, independent contractors to establish "patent pending" status (CX 46O, 49D, 2604H) do not preclude an understanding on the part of prospective clients that RLO is qualified to prepare, file and prosecute patent applications by reason of retaining patent attorneys or patent agents on its staff (Finding 148).

The first services which RLO offers to potential clients is a search of Patent Office records. At this juncture, absent a clear disclosure to the contrary, potential clients may reasonably infer that Raymond Lee and/or RLO are qualified to handle all aspects of patentability as may be necessary in the course of marketing inventions, which would include prosecution of patent applications before the Patent Office (Finding 150).

Having created the potential for deception, respondents had a duty to affirmatively disclose to potential clients that Lee and RLO were not registered patent attorneys or agents and were not qualified to prepare, file or prosecute patent applications before the Patent Office.

5. *RLO's Unauthorized Use of the Names, Photographs and Quotations of Public Figures in Its Promotional Literature*

Complaint Paragraphs Seventeen and Eighteen allege that respondents have, without authorization, used the names, photographs and quotations of public figures in their promotional literature and that such use has misled potential clients into the erroneous belief that RLO or its services have been endorsed by these [131] officials. Complaint counsel contend that, relying on this

mistaken belief, potential clients have purchased respondents' services.

Many promotional brochures distributed to potential clients by RLO contained the names, photographs and quotations of prominent public officials impliedly endorsing or recommending RLO or its services. Quotations set forth in such brochures were excised from routine responses written by such officials after receiving a letter from RLO advising them of services RLO provides which might be of assistance to their constituents. The photographs reproduced in conjunction with such quotes were obtained by requesting photographs from the respective officials' office without disclosing RLO's intended commercial use (Finding 169).

Brochures utilized by RLO under a heading "A FEW WORDS FROM SOME PROMINENT NATIONAL LEADERS" set forth photographs and quotations of former United States Senator Peter H. Dominick of Colorado, former Congresswoman Julia Butler Hansen of Washington, United States Senator Jennings Randolph of West Virginia, and former Governor Dewey Bartlett of Oklahoma, now a United States Senator. A variation of this brochure sets forth photographs and quotations of Congressman William B. Widnall of New Jersey and former Congressman Alphonzo Bell of California (Finding 170). Another RLO brochure reproduces photographs and quotations of United States Senator Hubert H. Humphrey of Minnesota, former Governor Kenneth M. Curtis of Maine and former United States Senator John V. Tunney of California. A letter from former Congressman Alphonzo Bell of California written on Congressional letterhead, from which the date has been deleted and a photograph of Congressman Bell is reproduced in another RLO brochure (Finding 172).

Senator Randolph, former Congressman Bell and Senator Bartlett testified that they had never endorsed RLO, had never granted permission to RLO to use their photographs, titles or quotations in RLO promotional literature, permission for such use had never been requested, and they unanimously objected to such use. Correspondence to RLO from these witnesses, as well as such correspondence from Senator Humphrey and former Senators Dominick and Tunney, objecting to RLO's unauthorized commercial use of their photographs, titles and letter quotations were also received in evidence (Finding 173). [132]

RLO promotional brochures also contain photographs of John V. Lindsay, former Mayor of New York City, awarding a "Declaration of Commendation" to Mr. Raymond Lee and reproduce a facsimile of this commendation. Many of the brochures containing former Mayor

Lindsay's photograph state in bold type on the cover page that RLO is "INTERNATIONALLY KNOWN BY GOVERNMENT COMMERCE & INDUSTRY FOR ITS SUPPORT LEADERSHIP & INTEGRITY" (Finding 175).

The "Declaration of Commendation" was devised by the City of New York to show its appreciation to individuals and organizations doing business in New York City for their participation in a program offering assistance to small business in the city via the Executive Volunteers Corps and to publicize this program (Finding 176). Neither Mayor Lindsay nor the New York City Department of Commerce had intended to endorse the commercial enterprises of the recipients of these awards. Mayor Lindsay's permission to use his photograph in RLO brochures had never been requested nor had such permission been granted (Finding 177).

Promotional brochures sent to potential RLO clients also contained a photograph of an RLO client, Mr. Hatch, shaking hands with President John F. Kennedy. This photograph was forwarded to RLO by Mr. Hatch for use in its advertising programs, but it is apparently unrelated to any relationship between RLO and Mr. Hatch or President Kennedy (Finding 178).

RLO's position with regard to its unauthorized use of public officials' photographs, titles, and quotations in its promotional literature is that "[t]he First Amendment protects RLO's accurate statement and portrayals, whether consented to or not" and that if any cause of action arises from such unauthorized use it is solely a private right (RRF, pp. 32-33; RPF, pp. 49-50). The record also discloses that when requests were received from public officials to discontinue the unauthorized commercial use of their photographs and letters in RLO promotional literature, RLO asserted it had the right to use such letters and did not promptly comply with these requests (Findings 179-80). [133]

RLO further asserts that use of public officials' titles, names, photographs and quotations in its promotional literature was not intended to constitute an endorsement of RLO by the cited official, nor could such materials be construed as an endorsement. While denying any intent to imply endorsement by the public officials, RLO has advanced no other commercial reason for inclusion of these photographs and letter quotations in its promotional literature (Finding 181). Use of the titles, names, photographs and quotations of public figures in conjunction with statements such as "Internationally known by government. . .for its support and leadership", "Words of Praise from some of our clients" and "A few words from some prominent National Leaders" helped to create and reinforce the misimpression in the minds of potential clients that RLO had, in

fact, received endorsements from these public officials. Quotations from correspondence of public officials were taken out of context and, as used by RLO, strongly indicated, by implication, that such individuals intended to endorse RLO and its services.

Contrary to RLO's contention that there is no evidence that anyone thought that the presence of such material was or could be construed as an endorsement of RLO's services, the public officials themselves recognized the capacity to mislead inherent in such practice (Finding 182). Clients of RLO who testified in this proceeding stated that they were favorably impressed by the photographs and quotations of public officials in RLO's promotional brochures (Finding 183). Further, a review of the promotional brochures received in evidence clearly demonstrates the inherent capacity of this material to mislead potential RLO clients into the belief that such high public officials had endorsed or recommended RLO and its services (Finding 184).

The extensive use of prominent public officials' titles, names, photographs and letter quotations in advertising brochures was obviously intended by RLO to constitute endorsements of RLO and its services. This extensive use by RLO could have no other purpose than to favorably impress and influence potential clients to whom such brochures were sent. RLO's contention that these brochures were not intended as endorsements taxes credulity. The knowing use of such fabricated endorsements cannot be justified on any lawful basis. [134]

*6. RLO's Services Are of Little or No Value to Its Clients
and The Retention of Money for Such Services Is an Unfair
Act or Practice*

Paragraphs Twenty One and Twenty Two of the complaint allege that respondents' unfair or deceptive acts or practices have induced persons to pay over to respondents substantial sums of money for services of little or no value, and respondents have failed or refused to refund such sums. The retention of such sums of money is alleged to be a continuing unfair act or practice. Findings 185-216 present in detail facts establishing that RLO's services are of little or no value to its clients.

RLO's advertisements, brochures, letters, contracts, method of doing business, and the oral representations made by RLO employees, convey the definite impression to potential clients that the ideas or inventions accepted by RLO for "development" and "introduction to industry" are feasible and marketable and that there is a chance that the inventor, with RLO's assistance, will be successful (Findings

186-88, 190-91, 193). This is the total representation made by RLO to potential clients prior to the time clients sign the RLO development contract and agree to pay money for such services.

The most direct and meaningful evidence of the value of RLO's services to its clients is the amount of money earned by clients through the licensing of ideas or inventions handled by RLO. RLO has negotiated only eight (8) licenses for its clients during the period 1968 through 1976; four (4) of these licenses were for one invention. In 1976, RLO advised potential clients in the State of California, pursuant to a state statute, that only three (3) out of thirty thousand (30,000) clients of RLO had earned more money from their inventions than they had paid to RLO in fees (Finding 194).

RLO contends that there are an "unknown and untold number of successful arrangements entered into. . . by RLO clients without RLO's knowledge" (Finding 195). Support for this contention is based on general testimony of RLO officials. It is incredible to contend that any significant number of clients have successfully licensed inventions partially owned by RLO without RLO having some knowledge of this fact and participating in the rewards. [135]

Respondents made some contentions during the trial that clients were motivated not necessarily by money, but by matters of pride in obtaining a patent or in solving a problem. It is obvious, however, that the primary and overriding consideration of RLO clients was the desire to make money (Finding 194, footnote). RLO's advertising and promotional literature emphasize the monetary rewards which clients may expect; pride in self-accomplishment is not accentuated.

Not only has RLO's overall services been of little or no value to its clients, but an analysis of the individual services rendered by RLO reveals that nothing of value has been provided clients. The record indicates that the preliminary product research for which RLO charges \$100 and up and for which RLO pays approximately \$8, is inadequate as a patentability search (Findings 196-97). RLO does not furnish the client with a patentability report or evaluation and the patent attorney retained by RLO does not furnish a patentability report or evaluation. The client, according to RLO, is the person best qualified to make his own evaluation of patentability of his idea or invention. Further, the client receives no face-to-face consultation from the patent attorney retained by RLO. The first time an RLO client even knows the name of the patent attorney retained by RLO is when the client receives from RLO the patent application which is to be signed by the client and returned to RLO (Finding 199).

Some RLO clients receive patents on their ideas or inventions. However, the mere fact a patent issues is of little value. Many

patents that issue are commercially worthless, particularly because the subject matter covered by the patent specifications or claims is too narrow to provide any significant commercial protection. The fact that patent pending status has been obtained for clients and that actual patents have issued have had no appreciable effect on RLO's success in obtaining licenses for its clients. Therefore, the fact that patents issue to some RLO clients contributes little to the value of RLO's services to its clients (Finding 202). [136]

RLO does not give its clients' ideas or inventions any evaluation as to marketability (Finding 203). Without an adequate screening and evaluation process, little ultimate success can be anticipated for ideas or inventions handled by RLO. Placing every idea or invention presented to RLO through routine marketing procedures is of little or no value to clients; in fact, such marketing procedures actually may have an adverse impact on those clients' ideas or inventions which may have some merit. Professor Gerald G. Udell, Associate Professor of Marketing and Director of the Experimental Center for the Advancement of Inventions and Innovations at the University of Oregon, testified that placing in the channels of distribution unevaluated ideas is a highly ineffective approach to marketing:

The problem is that if ideas are . . . put into the marketplace without a previous analysis or evaluation of the marketability of that idea, you have the problem that the channels become clogged with ideas that lack feasibility. This, then, in turn raises the search cost to the corporation, and you get static in the channels of distribution and it results in a highly ineffective approach to marketing the idea because of the cost involved in searching through all the ideas in order to find one good one. (Tr. 8349; see also, Finding 206).

The actual prospectuses which RLO mailed to corporations and organizations in an attempt to market its clients' inventions were severely criticized by marketing experts and new product managers who testified in this proceeding (Finding 207). Witnesses characterized the prospectuses as superficial and uninformative. The products identified in the prospectuses were criticized as "technically impractical, maybe even bordering on the stupid," obviously old ideas, silly and incomprehensible, "clearly ridiculous and unworthy of the dignity of a prospectus of any kind" (Findings 208, 210-11). Other criticism was directed at the "rote observations" and standard boiler-plate phrases used in all prospectuses, such as existing facilities can be utilized to minimize [137] tooling and production costs; materials may be varied to suit such facilities; standardization of components will minimize inventory costs; there is a growing demand for the product, or, the product fills a long-felt need (Finding 209). These statements in the prospectuses were termed by one

marketing expert as intellectually dishonest and unlikely to attract the interest of the marketplace (Lang, Tr. 3419-24).

Other witnesses criticized RLO's practice of mailing prospectuses to companies who had no interest in the particular products described in the prospectuses. An official of one company testified that only about one in fifteen prospectuses he received from RLO had any pertinence to his company's product line (Murphy, Tr. 384, 397J; see also Finding 212). Clients criticized the errors made by RLO in mailing prospectuses to companies no longer in business and the use of incorrect company addresses (Finding 215).

RLO contends its clients have a right to have access to the patent system and to industry (RRF, p. 9) and that RLO's services provide reasonable and economic access to this system (RPF, pp. 55-57; RRF, pp. 9-11). RLO's practice of accepting ideas or inventions for patenting and marketing without making any evaluation, and placing such ideas or inventions in the marketplace through standard marketing procedures, *may* be relatively inexpensive. The asserted reasonableness of the cost of RLO's services does not, however, atone for the lack of any value to clients.

The record in this proceeding demonstrates that RLO has induced potential clients by deceptive and misleading advertisements and representations to pay substantial sums of money to RLO in the expectation they will receive individualized and expert patenting, development and marketing services which will result in the successful marketing of their ideas or inventions to industry. The services clients receive are, in actuality, of little or no value to them. Further, the availability to the "system" which RLO purports to offer to its clients may have serious adverse affects on that system. Mr. Sears, a Patent Office official, testified that the Patent Office relies on the patent bar to discourage inventors whose ideas lack practicality: [138]

Certainly, I would hope that patent attorneys and agents would discourage certain types of inventors where the invention, while perhaps useful in a marginal sense, new and unobvious, because nobody in his right mind would put it together — he would discourage that person from going ahead. (Tr. 1144; see also, Finding 206).

Contrary to RLO's contention that it makes the system available to the ordinary person, it is more probable that its business procedures are a detriment to its own clients and to many others who may have worthwhile ideas or inventions.

7. *Responsibility of Individual Respondents Raymond Lee and Lawrence Peska for Challenged Acts and Practices of Corporate Respondent*

(a). Raymond Lee and RLO

While denying any violations on the part of respondents, counsel for respondents RLO and Lee maintain that "[v]irtually all the dissatisfaction expressed by witnesses occurred several years ago, during which time Lawrence Peska . . . controlled nearly every facet of RLO's day-to-day operations" and "was the principal instrument in the formulation of RLO sales, marketing and service policies, its acts and practices" (RPF, p. 11). Counsel for respondents RLO and Lee also contend that, since Peska's employment terminated, substantial efforts have been made to revise RLO's policies and methods of doing business (RPF, p. 12).

Although evidence was received regarding RLO's current methods of hiring, training and monitoring Account Executives, recent revisions in these areas were not shown to have alleviated the deception and misrepresentation rampant at RLO prior to such changes (Findings 233-44). No evidence was offered that specific acts or practices challenged in the complaint have been eradicated nor would such evidence, if any existed, preclude the possibility that, absent an order, such acts and practices would not be resumed in the future. [139]

Counsel for respondents Lee and RLO, also argue that individual responsibility for RLO's acts and practices, if any exist, rests with Lawrence Peska rather than respondent Lee (RLO Ans. p. 4). This argument is without merit.

Throughout RLO's corporate existence, Lee has been its President and sole stockholder and director (Finding 3). From 1967 to 1972 Lee had primary responsibility for RLO's financial matters, engineering operations and general planning for the company (Lee, Tr. 444, 454). He was responsible for RLO's practice of taking a twenty percent (20%) interest in clients' inventions and for the inclusion of his professional education and background in RLO promotional literature (Lee, Tr. 5020; Peska, Tr. 7148-49). During Mr. Peska's tenure at RLO, respondent Lee had final approval on all RLO advertisements (Lee, Tr. 462-64, 5078; Peska, Tr. 4873-84, 4786, 4791, 7304, 7617, 7705). From 1973 to the present, Lee has had primary responsibility for RLO's overall engineering operations, marketing division and administrative operations (Lee, Tr. 445, 454, 4998, 5007; Dicks, Tr. 761).

By virtue of his positions of authority at RLO and the specific

business activities for which he has had responsibility, Lee has been and is directly responsible for formulating, directing and controlling the acts and practices of RLO challenged in this proceeding.

(b). Lawrence Peska

Counsel for respondent Peska maintains that no respondent violated Section 5 of the Federal Trade Commission Act, that Peska had no responsibility for the acts of other respondents, particularly after November 1972 and that, due to his disassociation from RLO, Peska will have no future effect on the acts and practices of RLO or Lee (Peska, PF, p. 5).

Peska's responsibility for formulating, directing and controlling the acts and practices of RLO challenged in this proceeding is detailed in Findings 220-25. Until November 1972, he, as RLO's Vice President, had extensive authority in the areas of sales, administrative management, advertising and directing the day-to-day operations of RLO (Finding 221). The practices implemented in these areas during his tenure have not been appreciably changed since 1972. [140]

Many of the practices Peska formulated at RLO were instituted at LPA after 1972, when this corporation became a competitor of RLO (Findings 226-27, 230-31). Peska has been and is the President and sole stockholder and director of LPA (Finding 226). Through LPA, Peska has continued the challenged acts and practices he was responsible for formulating, directing and controlling at RLO, and in which he participated while at RLO.

C. Legal Discussion

In this proceeding respondents' shrewd use of exaggeration, innuendo, ambiguity, half-truths, and omission of material facts has a substantial tendency and capacity to create a misleading impression in the minds of the ordinary purchaser concerning RLO's business and professional qualifications and the nature and value of its services. This misleading impression is heightened by respondents' method of operation in a technical area where little information is readily available to the public.

Respondents contend that their advertisements, brochures and contracts are clear, understandable and mean what they say. In evaluating respondents' advertisements, brochures, and contracts, it is necessary to consider the total impression created, not focus on isolated words or phrases. The important criterion is not what respondents say, but what the advertisements and contracts are

reasonably likely to represent to the public. *P. Lorillard Co. v. Federal Trade Commission*, 186 F.2d 52, 58, (4th Cir. 1950). In this regard, the Commission must look to the ignorant, the unthinking and credulous, rather than to the cautious and knowledgeable. *Charles of the Ritz Dist. Corp. v. Federal Trade Commission*, 143 F.2d 676, 680 (2nd Cir. 1944); *Exposition Press, Inc. v. Federal Trade Commission*, 295 F.2d 869 (2nd Cir. 1961).

There is substantial testimony in this record that the public has been deceived by respondents' acts and practices. In addition to this testimony, the Commission can view respondents' advertisements, brochures, contracts, and method of operation and [141] draw its own conclusions as to the net impression likely to be created in the minds of the public. This authority has been repeatedly sanctioned over the years. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 391-392 (1965); *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523, 528 (5th Cir. 1963); *Merck & Co. v. Federal Trade Commission*, 392 F.2d 921, 925 (6th Cir. 1968); *Kalwajtys v. Federal Trade Commission*, 237 F.2d 654, 656 (7th Cir. 1956); *Exposition Press, Inc. v. Federal Trade Commission*, *supra*; *Drew & Co. v. Federal Trade Commission*, 235 F.2d 735, 741 (2nd Cir. 1956).¹⁸

The statutory ban against false and misleading advertisements and representations applies to that which is suggested as well as that which is asserted. Where advertisements and representations convey more than one meaning, one of which is false, the respondent is liable for misleading variety. *Murray Space Shoe Corp. v. Federal Trade Commission*, 304 F.2d 270, 272 (2nd Cir. 1963); *Rhodes Pharmacal Co. v. Federal Trade Commission*, 208 F.2d 383, 387 (7th Cir. 1953). Actual deception need not be shown, a substantial tendency and capacity to deceive is all that is necessary to establish a violation of law. *Federal Trade Commission v. Colgate-Palmolive Co.*, *supra*, at 391-392; *Feil v. Federal Trade Commission*, 285 F.2d 879 (9th Cir. 1960); *Charles of the Ritz*, *supra*; *U.S. Retail Credit Ass'n. v. Federal Trade Commission*, 300 F.2d 212, 221 (4th Cir. 1962).

It is firmly settled law that statements that contain less than the whole truth can be deceptive — "To tell less than the whole truth is a well known method of deception. . . ." *P. Lorillard Co. v. Federal Trade Commission*, *supra*, at 58; *Tashof v. Federal Trade Commission*, 437 F.2d 707, 714, fn. 37 (D.C. Cir. 1970). Further, if the first contact with a potential purchaser is deceptive, the fact that the truth may later be revealed will not remedy the initial wrong. *Carter Products, Inc. v. Federal Trade Commission*, 186 F.2d 821 (7th Cir.

¹⁸ The administrative law judge likewise has this authority, subject to Commission review. *Walco Toy Company, Inc.* 83 F.T.C. 1783 (1974).

1951); *Montgomery Ward v. Federal Trade Commission*, 379 F.2d 666 (7th Cir. 1967). Also, the Commission repeatedly has [142] held that deceptive non-disclosure of material facts is a violation of Section 5. *Feil v. Federal Trade Commission, supra*; *All-State Industries of North Carolina, Inc., v. Federal Trade Commission*, 423 F.2d 423 (4th Cir. 1970); *Tashof v. Federal Trade Commission, supra*.

The above parameters of the law governing false and misleading advertising and deceptive acts and practices make it evident that the total representation made to potential clients by respondents about their business and professional qualifications and the nature and value of their services is false, misleading and deceptive. Further, specific acts and practices of respondents are clearly within these established prohibitions.

The flagrant and extensive use of the titles, names, photographs and excerpts from letters of public figures in respondents' advertising, although accurately reproduced, creates the false implication that these public figures have endorsed respondents and their services. The use of the word *former*, preceding the professional qualifications of Respondent Lee, while true, can convey the understanding to some persons that Lee is a former government attorney. Absent a clear disclosure to the contrary, the implication remains that Lee is currently a private attorney and as such can prosecute patent applications.

Statements in respondents' contracts with clients concerning the evaluation of ideas or inventions and assurances of success are ambiguous and contradictory with other provisions of the same contracts and of other brochures and documents which are provided potential clients. Statements in respondents' development contracts that RLO will pay its proportionate share of government and other fees mutually agreed upon are unclear, ambiguous and contradictory to other provisions of the development contract which provide for a specific fee which includes the retention of a patent attorney to file a patent application.

In circumstances where respondents have used less than the full truth, where ambiguities and innuendoes are created, respondents are responsible for any misleading and deceptive impressions occasioned thereby. [143] An analysis of respondents' advertisements, brochures, and contracts, respondents' method of doing business, and the testimony of record leads to a logical conclusion that respondents' acts and practices have the tendency and capacity to deceive the public, and a substantial segment of the public has, in fact, been deceived.

Respondents RLO and Lee assert that, due to their questionable

motives and character, testimony of many of the witnesses called by complaint counsel should not be relied upon in reaching a decision in this matter. Respondents characterize the testimony of consumer witnesses as a recitation by "a few unhappy customers" about "limited elements" of "personal disappointment" with RLO and its services (RPF, p. 9; RRF, p. 3). Such unsatisfactory experiences are, according to respondents, aberrational and, for the most part, involve interactions with three Account Executives subsequently terminated by RLO (RRF, p. 50-61, 66). Testimony of former Account Executives is suspect, according to respondents, since these individuals include an admitted liar, a convicted felon¹⁹, and persons currently in litigation with RLO (RPF, p. 4; RRF, pp. 3, 50-61).

Taking respondents' characterizations into account in evaluating the testimony of complaint counsel's witnesses, such characterizations do not preclude reliance on this testimony. The testimony of former Account Executives and RLO clients is consistent with the documentary evidence of record, the testimony of other witnesses, and respondents' entire course of business dealings as disclosed during this proceeding. To give weight to this testimony is, therefore, reasonable and proper.

Respondents RLO's and Lee's constitutional argument centers on the use of prominent public officials' names, titles, photographs and letter quotations in their promotional literature. Continually [144] maintaining that there has been no evidence submitted demonstrating a tendency or capacity to deceive or mislead members of the public into believing an enforcement of RLO or its services has been given by public officials whose names and quotations appear in RLO's advertisements, respondents assert that RLO's accurate statements and portrayals, whether consented to or not, are protected by the First Amendment of the United States Constitution (RPF, p. 13; RRF, pp. 48-52).

Respondents have erroneously sought to focus on whether prior consent to commercial use was obtained from the officials and the private right of action which may exist absent such consent. They maintain that inclusion of a challenge to such use in this proceeding constitutes a non-permissible governmental attempt to enforce a private right.

While cognizant that such a private right may exist, the thrust of the Commission's challenge to the use of public officials' names,

¹⁹ The "admitted liar" fabricated educational background on his RLO employment application which was not checked by RLO or considered relevant to his sales function (Glass, Tr. 3898; Friedman, Tr. 6270). The "convicted felon" pleaded guilty to a violation of the U.S. Security and Exchange Laws; Lee and Si Friedman were informed and knew of this conviction during this Account Executive's tenure at RLO (Schwartz, Tr. 4065). These "character defects" were, apparently, matters of concern to RLO only during this litigation.

titles, photographs and letter quotations in this proceeding is the capacity of such use to mislead potential clients into the belief that such officials have endorsed RLO or its services.

Contemporaneous correspondence from and the testimony of the public officials, as well as testimony of clients of RLO and an examination of advertisements received in evidence, amply demonstrate the inherent capacity of RLO's advertisements to mislead potential clients into a belief that RLO or its services have been endorsed by the public officials whose photographs and quotations appear in such advertisements.

While certain forms of "commercial speech" do enjoy constitutional protection, this protection is not extended to deceptive or misleading advertising:

... Untruthful speech, commercial or otherwise, has never been protected for its own sake. *Gertz v. Robert Welch, Inc.* 418 U.S. 323, 340 (1974); *Konigsberg v. State Bar*, 366 U.S. 36, 49 and n. 10 (1961). Obviously, much commercial speech is not provably false, or even wholly false, but only [145] deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flows cleanly as well as freely.

Virginia State Board of Pharmacy v. Virginia Consumer Council, Inc., 425 U.S. 747, 771-72 (1976); see also, *Bigelow v. Virginia*, 421 U.S. 809 (1975).

Given the misleading and deceptive character of RLO's advertising, as it relates to the use of public officials' names, photographs, titles and quotations, as well as other misrepresentations documented in the record, RLO can claim no constitutional protection for its dissemination.

Respondents RLO and Lee also contend that complaint counsel's unwarranted refusal to accept a consent order has forced them to continue with an "extraordinarily burdensome expensive proceeding" which, in essence, has constituted a deprivation of property without due process (RPF, p. 17). This contention is without merit. Respondents' "Motion To Settle Administrative Proceeding" filed November 15, 1976, which was opposed by complaint counsel, was considered by the undersigned and certified to the Commission, without recommendation, on December 3, 1976. The Commission thereafter determined there was not a likelihood of settlement and denied respondents' motion on December 14, 1976. Respondents have no constitutional right to settle this litigation, and certainly no such right to settle on their own terms.

Respondents RLO and Lee argue that the order, if any is to issue in this case, should not be applicable to respondent Raymond Lee,

individually. These respondents contend that responsibility for adoption and utilization of RLO's challenged acts and practices rests entirely with individual respondent Peska (RPF, pp. 11-12). Such respondents attempt the "oft-repeated effort to avoid responsibility for a violation of the statute by shifting it to another. These attempts are uniformly unsuccessful." *Colgate-Palmolive Co.*, 59 F.T.C. 1452, 1471 (1961), final order *aff'd*, *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965). The record of this proceeding [146] offers no support for relieving respondent Lee of his individual liability for RLO's proven unlawful acts and practices.

Respondent Lee as the President, sole director and shareholder of RLO formulated many of the specific acts and practices challenged and, at all times, had the power to control, and did supervise all challenged acts and practices. Lee's direct participation in the activities of RLO and his positions of authority and control in the corporation provide abundant bases on which to find him individually liable for corporate respondents' unfair and deceptive acts and practices. *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937); *Rayex Corporation, v. Federal Trade Commission*, 317 F.2d 290 (2d Cir. 1963); *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F.2d 7 (2d Cir. 1954).

Respondent Peska seeks to avoid individual liability by repeatedly disclaiming any responsibility, direct or derivative, for RLO's acts and practices and asserting that, due to his total disassociation from corporate respondent RLO since November 1972, there is no substantial likelihood of his having any future effect on RLO's acts and practices (Peska, Ans. ¶1; Proposed Findings of Fact and Conclusions of Law submitted by Respondent Lawrence Peska Individually, p. 5; Motion and Affidavit of Respondent Peska filed November 4, 1975; Motion of Respondent Lawrence Peska for Summary Decision filed February 4, 1976). These arguments are meritless.

As the record amply demonstrates, respondent Peska, while Vice President of RLO, was instrumental in formulating, directing and controlling many of the acts and practices challenged in this proceeding. His subsequent disassociation from RLO does not relieve him of his responsibility in this regard. The Federal Trade Commission has authority to bind individually former corporate officers who directed and controlled challenged acts and practices, if necessary to close off any wide "loophole" through which the order might be evaded. *Benrus Watch Co. v. Federal Trade Commission*, 352 F.2d 313 (8th Cir. 1965); *Carpets "R" Us, Inc.*, 87 F.T.C. 303 (1976); *Coran Bros. Corp.*, 72 F.T.C. 1 (1967). Such a loophole exists.

Respondent Peska, since November 1972, [147] has been President, director and sole stockholder of LPA, a corporation offering services to inventors similar to those offered by RLO. The record emphasizes the need to bind Peska individually as many of the challenged acts and practices have, under the direction of Peska, been adopted and are currently employed by LPA.

D. The Remedy

It is well established that "the Commission has wide discretion in its choice of a remedy deemed adequate to cope with unlawful practices" and that, so long as the remedy selected has a "reasonable relation to the unlawful practices found to exist" the courts will not interfere. *Jacob Seigel Co. v. Federal Trade Commission*, 327 U.S. 608, 611 (1946); see also, *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 726 (1948); *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *L. G. Balfour Co. v. Federal Trade Commission*, 442 F.2d 1 (7th Cir. 1971). Having established a violation, the Commission must "be allowed effectively to close all roads to the prohibited goal, so that the order may not be by-passed with impunity." *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); see also, *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 431 (1957).

Although respondents RLO and Lee maintain that numerous changes in RLO's methods of operation make entry of an order unnecessary, their claimed discontinuance of unlawful acts and practices is not supported by the record. Even if record support existed for this position, an order would be proper since:

[W]here an illegal trade practice is once proved against an enterprise, and is capable of being perpetuated or resumed, it may be presumed to have been continued, and an order may issue to prevent it, even upon a showing that it has been discontinued or abandoned.

P.F. Collier & Son Corp. v. Federal Trade Commission, 427 F.2d 261, 275 (6th Cir. 1970); see also, *Perma-Maid v. Federal Trade Commission*, 121 F.2d 282 (6th Cir. 1941). [148]

In fashioning an effective remedy in the instant case it is imperative, given the proven violations, that the order prevent all future misrepresentations and require respondents to fully advise clients of the actual services they will receive, the total costs they should anticipate for such services, and the real value (i.e., respondents' "track record") of services to be rendered. If misrepresentations are prohibited and potential clients are aware of what they are to receive if they enter into a contract for respondents'

services, any decision to deal with respondents thereafter will be an informed one. Since the services offered by respondents are in a highly technical area, all disclosures required by the order must be adequate on all points and understandable.

Order provisions sought by complaint counsel regulating the fees respondents can charge, or *requiring* respondents to perform additional services, are not needed to correct the abuses found. The order must not be punitive, but must assure correction of those practices found to be unlawful and prevent their reoccurrence in the future.

The cease and desist provisions in the order issued herewith (Part I) are directed to specific violations of law which the evidence has revealed. The affirmative disclosure requirements (Part II through Part VI) are necessary to insure that potential clients are fully informed in the circumstances. The compliance provisions of the order (Part VII through Part IX) have been modified from those proposed by complaint counsel in light of respondents arguments (RRF, pp. 35-36). If any of these provisions prove unduly onerous, or if respondents change their business operations in the future, a petition to the Commission for modification is the most appropriate way to deal with such conjectures. *Encyclopedia Britannica, Inc.*, 87 F.T.C. 421, 528 fn. 20 (1976); *Federal Trade Commission v. Colgate-Palmolive Co.*, *supra* at 394; *Vanity Fair Paper Mills, Inc. v. Federal Trade Commission*, 311 F.2d 480, 487-488 (2d Cir. 1962).

Order provision Part I, Paragraph 7, prohibiting future misrepresentations of respondents' access or relationship to corporations or others seeking new [149] product ideas or inventions, while not reflective of a specific complaint allegation, is within the allegations of complaint Paragraphs Seven and Eight subparagraphs Five, and Paragraph Seventeen. The necessity of including this provision is also amply supported by the record. Respondents' promotional literature repeatedly represents directly and indirectly, an on-going relationship between respondents and corporations seeking new products which, allegedly, enhances respondents' ability to sell or license their clients' ideas or inventions (Findings 44, 46). In fact no such unique relationship has or does exist (Finding 48), nor are respondents successful in selling or licensing ideas or inventions to those corporations identified in their promotional literature (CX 3053 *in camera*; Stiegler, Tr. 6182, 6203).

Part II and Part III of the order provide for certain disclosures to be made in respondents' advertisements and promotional literature. These disclosures will provide potential clients with relevant information at the time of the initial contact, and the record

evidence reflects these disclosures are appropriate requirements in this proceeding.

Part V of the order requires respondents to provide purchasers with a time schedule within which services will be performed. While a violation of the statute was not proved in respect to delay, it is nevertheless appropriate to require respondents to provide a time schedule. Respondents sell services in an area where the public is basically without sophistication, and is not aware of normal time requirements for such services. The record reflects much client concern about delay in respondents' services, whether or not attributable to respondents. RLO recognizes the importance of this information to the public and has proposed such a time schedule and a customer reporting requirement as a basis for regulation of the invention service business (RRF, pp. 88-89). [150]

The order provisions, Part VI, Paragraphs One and Two, providing for a three day "cooling-off" period and a right to a full refund within ten (10) days of any money paid pursuant to such contract, are required to insure potential clients have adequate time to read and understand the disclosures respondents are required to make by virtue of this order. Given respondents' business methods, a potential client may initially visit respondents' offices, receive respondents' promotional literature and, during the same visit, enter a contract for the marketing of his idea or invention. Under these circumstances the disclosures required in respondents' promotional literature might be totally ineffective to fully apprise the potential client of the services he is to receive. Providing for a three-day period in which the purchaser may study respondents' promotional literature and the contract will insure that the required disclosures will be considered. Respondent RLO and Lee have also recognized the necessity for a provision of this type (RRF, p. 88).

Considering the entire record of this proceeding, the order entered hereinafter is necessary and appropriate to remedy the violations of law and to protect the public in the future. [151]

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the respondents and the subject matter of this proceeding.

2. Respondent, The Raymond Lee Organization, 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 230 Park Ave., New York, New York. RLO's affiliated corporations are: Innovation Resources Corporation, Los Angeles, California; International Technology Transfer, Ltd.,

Ontario, Canada; Napatco, Inc., New York, New York; Raymond Lee Organization of Colorado, Inc., Denver, Colorado; Raymond Lee Organization of Texas, Inc., Houston, Texas; Republic Industries, Inc., New York, New York; National Patent and Trademark Company, Washington, D. C.

Individual respondent Raymond Lee is now, and has been since its formation, President and sole stockholder and director of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices set forth in the complaint.

Individual respondent Lawrence Peska is a former officer of the corporate respondent and, while an officer, directed, formulated and controlled the acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. Mr. Peska is now engaged in his own idea promotion business, Lawrence Peska Associates, Inc., with its principal office and place of business located at 500 Fifth Ave., New York, New York.

3. Through their various organizational divisions and wholly-owned subsidiaries, respondents are now, and for some time in the past, have been engaged in the advertising, solicitation, offering for sale, sale and distribution of services to inventors and prospective inventors and to other persons with ideas [152] for products in connection with the purported development, advice, and research for patent application, alleged introduction to industry and the purported marketing, sale or licensing of said inventions or ideas.

In the course and conduct of their business, respondents, their employees, agents or representatives, perform preliminary patent searches, prepare patent applications on inventions for submission to the United States Patent and Trademark Office and to foreign patent offices, and compile prospectuses and other documents for distribution to manufacturers and others.

4. In the course and conduct of their business, respondents have contracted to sell and have sold such services to purchasers located throughout the United States and have caused, and are now causing their services to be advertised, offered for sale and sold by means of newspaper and magazine advertisements, flyers, brochures and other printed literature of interstate circulation as well as by direct personal contact with potential purchasers by telephone and through letters, contracts, payments of monies and by other documents and instruments which have been transmitted by means of the United States mail, from respondents' principal place of business in New York State to such potential purchasers located throughout the United States. At all times relevant hereto,

respondents have maintained a substantial course of trade in the sale of respondents' services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale of services to inventors and to other persons with ideas for products is and has been substantial.

5. Respondents are now and at all times relevant hereto have been in substantial competition in or affecting commerce with other corporations, firms and individuals engaged in the advertising, offering for sale and sale of services of the same general kind and nature as those advertised, offered for sale and sold by respondents.

6. In the course and conduct of their business, and for the purpose of inducing the purchase of their services, respondents have made, and are now making, certain statements and representations in connection [153] with the advertising, offering for sale, sale and distribution of said services. By means of advertisements in various publications of general circulation, other advertising and promotional material, letters mailed to potential clients, contracts or oral or written sales presentations, respondents have made, and are now making statements and representations regarding respondents' business and professional qualifications and the nature and value of their services.

7. By and through the aforesaid statements and representations respondents have represented, and are now representing, directly or by implication, that:

(1) Respondent Raymond Lee is a registered patent attorney, a registered patent agent, or a licensed attorney.

(2) Respondents are qualified or recognized by the United States Patent and Trademark Office to prepare, file or prosecute applications for patents before said Office on behalf of their customers.

(3) Purchasers of respondents' services do not need to pay extra fees after they have entered into a contract with respondents.

(4) Respondents substantially develop or technically refine inventions or ideas for new products submitted to them by their customers.

(5) Respondents actively and successfully introduce, promote, and negotiate, on behalf of their customers, with manufacturers. [154]

(6) Respondents provide potential purchasers of their services with a fair, adequate and thorough appraisal of the patentability or the merit and marketability of their inventions or ideas for a new product, on which said potential purchasers can rely prior to contracting with respondents.

In truth and in fact:

(1) Respondent Raymond Lee is not a registered patent attorney, a registered patent agent, or a licensed attorney.

(2) Respondents are not qualified or recognized by the United States Patent and Trademark Office to prepare, file or prosecute applications for patents before said office.

(3) Purchasers of respondents' services may need to pay extra fees after they have entered into a contract with respondents.

(4) Respondents do not substantially develop or technically refine inventions or ideas for new products submitted to them by their customers.

(5) Respondents do not actively and successfully introduce, promote and negotiate, on behalf of their customers, with manufacturers.

(6) Respondents do not provide potential purchasers of their services with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and [155] marketability of their ideas for a new product, on which potential purchasers can rely, prior to contracting with respondents.

Therefore, the statements, representations, acts and practices set forth herein were, and are, false, misleading and deceptive.

8. Allegations that respondents failed to act without unnecessary delay in obtaining patent protection for customers, have not been proved by evidence of record in this proceeding.

9. In the further course and conduct of their business, respondents have failed to disclose to potential purchasers of their services the following material facts:

(1) That The Raymond Lee Organization, Inc., as the assignee of an interest in its clients' inventions, and in the absence of any agreement to the contrary, may as a joint owner of any resulting patents, make, use or sell the patented invention or license other persons or firms to make, use or sell the patented invention without obtaining the consent of and without accounting to respondents' clients.

10. Knowledge of such fact would be of importance to potential purchasers in their evaluation of the nature and value of the services offered by respondents. Thus, respondents have failed to disclose material fact, which if known to potential purchasers, would be likely to affect their consideration of whether or not to enter into a contract with respondents.

11. In the further course and conduct of their business, respondents have utilized in various brochures, flyers and in other advertising materials, the names, titles, photographs and quotations of prominent public figures, without their knowledge, consent or

authorization. In many such instances, general comments made by such persons in correspondence with respondents utilized in respondents' advertisements have misled potential purchasers of respondents' services into the erroneous and mistaken belief that the persons so named, pictured or quoted have endorsed or utilized respondents' services. [156]

12. The use of the names, photographs, official titles and quotations from correspondence of prominent public officials, major corporations and respondents' clients, was and is a deceptive and unfair act and practice which has misled potential clients into the purchase of respondents' services.

13. Respondents' aforesaid unfair or deceptive acts or practices have induced and are now inducing persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for services by respondents was and is of little or no value. Respondents have received said sums and have failed to offer to refund, and refused to refund such money to such persons.

14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts have had, and now have the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of, and payment for, respondents' services by reason of said erroneous and mistaken belief.

15. The aforesaid statements, representations, acts and practices of respondents 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 or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

16. The order entered hereinafter is necessary to correct the unlawful conduct in which it has been concluded that respondents have been, and are, engaged, and to protect the public. [157]

ORDER

I

It is ordered, That The Raymond Lee Organization, Inc., a corporation, its successors and assigns, Raymond Lee, individually and as an officer of said corporation and Lawrence Peska, individually and as a former officer of said corporation, and respondents'

officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, with the exception of those offering patent and trademark services to professional attorneys and registered patent agents, in connection with the advertising, offering for sale or sale of services relating to the introduction, promotion, development, licensing, marketing or sale of ideas or inventions to industry, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any of respondents, or their officers, agents, representatives or employees, are registered patent attorneys or patent agents, or are [158] licensed, recognized or qualified to prepare, file, amend or prosecute patent applications before the United States Patent and Trademark Office, or before any patent offices located in foreign countries.

2. Representing, directly or indirectly, that respondents will develop or refine, or substantially develop or technically refine, inventions or ideas for new products submitted to them by their customers.

3. Representing, directly or indirectly, that respondents provide potential purchasers of their services with an appraisal of the patentability or the merit and marketability of their inventions or ideas for new products, on which said purchasers can rely.

4. Representing, directly or indirectly, that potential purchasers of respondents' services may or will receive a financial gain as a result of contracting with respondents. [159]

5. Representing, directly or indirectly, that any person, firm, organization or governmental agency or official has endorsed, used, or has used and been satisfied with respondents' services, unless such is a fact and such person, firm, organization or governmental agency or official has given prior written consent for such use.

6. Representing, directly or indirectly, the past earnings or success of any client unless such representations are representative of the typical experience of individuals contracting with respondents for the development and marketing of their inventions or ideas.

7. Representing, directly or indirectly, that corporations or other business organizations are seeking inventions, new products, or ideas for new products [160] through respondents, or that respondents have any special access to such corporations or other business organizations.

II

It is further ordered, That respondents shall:

1. Include in each printed advertisement the following notice conspicuously placed in print at least as large as the largest print in the advertising material other than respondents' name: *(name of respondent)* has assisted approximately *(number of clients)* during *(three preceding calendar years)*, of which *(number of clients)* directly involved us in transactions in which they received, as a result of *(name of respondent)* services, an amount of money in excess of the fee they paid to *(name of respondent)*.

2. Include in each advertisement broadcast by radio, or by television, the above-required notice, which [161] shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest part of the advertisement.

3. Maintain for a period of three (3) years:

a) A copy of each advertisement, each radio script, and each television script and film published or disseminated,

b) Records disclosing the date or dates each such advertisement, script or film was published or disseminated, and,

c) The name and address of each publication or broadcast media disseminating each said advertisement, script or film. [162]

III

It is further ordered, That respondents shall disclose the following information in a clear and conspicuous manner in all promotional literature:

1. That respondents are not registered patent attorneys or patent agents, do not employ such attorneys or agents, and are not licensed, recognized or qualified to prepare, file, amend or prosecute patent applications before the United States Patent and Trademark Office or before any patent offices located in foreign countries.

2. The total number of persons who contracted with respondents for the purchase of respondents' services within the three (3) calendar years immediately preceding the year in which the promotional literature is utilized, the number of such persons whose inventions were sold or licensed to industry during said period of time, and the number who [163] received, as a result of respondents' services, an amount of money in excess of the fee paid to respondents.

IV

It is further ordered, That respondents shall:

1. Make the following disclosures on or with any contract to be executed by potential clients. Said disclosures shall be in print at least as conspicuous as other language in said contract, but in no case smaller than 12 point upper case type. The disclosures shall be in the following form set off from the text of the contract by a black border, or in a separate document attached to the contract, and immediately above the line for the potential clients' signatures: [164]

NOTICE

(a) *(name of respondent)* has assisted approximately *(number of clients)* during *(three preceding calendar years)*, of which *(number of clients)* directly involved *(name of respondent)* in transactions in which they received, as a result of *(name of respondent)* services, an amount of money in excess of the fee paid to *(name of respondent)*.

(b) UNLESS THERE IS SOME WRITTEN AGREEMENT TO THE CONTRARY, THE HOLDER OF ANY INTEREST IN A PATENT, NO MATTER HOW SMALL HIS INTEREST MAY BE, AS A JOINT OWNER OF ANY RESULTING PATENT, CAN, BY LAW, MAKE, USE OR SELL THE PATENTED INVENTION WITHOUT THE KNOWLEDGE OR CONSENT OF THE OTHER PARTY OR PARTIES IN INTEREST AND WITHOUT BEING ACCOUNTABLE FOR THE PROCEEDS DERIVED THEREFROM. [165]

(c) BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY BEFORE YOU SIGN THIS AGREEMENT.

(d) The total fee you will be charged for the marketing of your idea or invention is *(dollar amount)*. (Fees may be separately given for specific individual services that may be rendered, so long as a total figure for all services is disclosed).

I, *(Name of Customer)*, hereby acknowledge receipt of a copy of this agreement on the date specified below.

Customer's Signature *Date*

[166] 2. At the time when the foregoing disclosures are made, respondents shall furnish each prospective purchaser of any of their services with a retainable duplicate copy of the disclosure document,

and secure from each such prospective purchaser a signed acknowledgement of the receipt thereof on the properly dated original copy. The document containing the disclosures shall be captioned "IMPORTANT INFORMATION," and shall not contain information or representations other than those set forth in Part IV, Paragraph 1 (a), (b), (c), and (d) above.

3. Respondents shall maintain, for a three (3) year period following the execution thereof, the originals of the signed acknowledgements of receipt of the disclosures described in Part IV, Paragraph 2, [167] and make them available for examination and copying by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

V

It is further ordered, That respondents shall:

1. Disclose on any contract for services an approximate time schedule, based on past performance, during which such services will be rendered, specify any contingencies which may or will necessitate a modification of such schedule, and inform the client of his right to obtain a refund for failure to meet the time schedule, as modified, unless permission, in writing, is given by the purchaser.

2. Furnish to any purchaser of respondents' services a written report every three (3) months commencing six (6) months after [168] acceptance of the contract for services, indentifying the contract and including a description of the services performed to date and services yet to be performed relative to the contract. A final report shall be furnished the purchaser at the time all services have been completed.

VI

It is further ordered, That respondents:

1. Furnish a completed "NOTICE OF CANCELLATION" form, in duplicate, to each purchaser of respondents' services. Such form shall be attached to the contract and shall be easily detachable. The "Notice," in at least twelve point upper case type, shall state:

NOTICE OF CANCELLATION

(enter date of transaction)

(date)

[169] You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date. Any money

you have paid pursuant to this transaction will be refunded to you within ten (10) days after receipt of this Notice.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to *(name of seller)* at *(address of seller's place of business)* not later than midnight of *(date)*

I hereby cancel this transaction. *(date)*

(buyer's signature)

2. Within ten (10) days after receipt of an executed "NOTICE OF CANCELLATION," refund to said purchaser all monies which have been paid to respondents pursuant to the cancelled transaction. [170]

VII

It is further ordered, That respondents shall:

1. Forthwith deliver a copy of this order, incorporating its provisions, to all present and future salespersons or other persons engaged in the sale of respondents' services and shall secure from each such salesperson or other person a signed statement acknowledging receipt of a copy of this order and their written agreement to adhere thereto.

2. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

3. Promptly notify the Commission of the discontinuance of any business, occupation or employment concerned with [171] the introduction, promotion, development, licensing, marketing, or sale of ideas or inventions and of the affiliation with any such new business, occupation or employment. Such notice shall include a description of respondents' ownership, duties and responsibilities in any such new business, occupation or employment.

VIII

It is further ordered, That nothing herein shall relieve respondents of any obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent with any provision of this order, respondents shall notify the Commission of such inconsistency and request advice as to compliance herewith.

IX

It is further ordered, That respondents shall, within sixty (60) days after entry of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

OPINION OF THE COMMISSION

BY CLANTON, *Commissioner*:

I. INTRODUCTION

On July 15, 1975, the Commission issued a complaint against respondents Raymond Lee Organization ("RLO"), Raymond Lee, the founder and chief officer of RLO and Lawrence Peska, a former officer of RLO¹ alleging violations of Section 5 of the Federal [2] Trade Commission Act (15 U.S.C. 45). The complaint challenges RLO's statements and representations regarding its business and professional qualifications, the services it offers to clients, and the value of such services.

With one exception, the administrative law judge ("ALJ") sustained the complaint allegations. On appeal, respondents vigorously challenge the ALJ's principal factual findings and legal conclusions, and raise constitutional issues with respect to the proceedings and the relief ordered by the law judge.

II. THE RAYMOND LEE ORGANIZATION

To provide some perspective for analyzing the practices challenged in this proceeding, a review of respondents' operations is in order. RLO is an idea and invention development company which offers patenting, developing, and marketing services to garage tinkerers and others who are convinced they have hit upon some imaginative idea for a new or improved product. The firm was founded in 1962 and operated as a sole proprietorship by Raymond Lee until its incorporation in 1967. (ID 5)² Initially comprising only Lee, Peska,

¹ Although the positions of corporate respondent RLO and individual respondent Lee are essentially identical, Peska raises different claims. He asserts first that he was not in a position of authority at RLO insofar as the challenged acts and practices were concerned, and second, that he left RLO before these practices occurred. These contentions will be treated separately below.

² The following abbreviations will be used in this opinion:

ID — Initial Decision finding number
ID p. — Initial Decision page number
Tr. — Transcript page number
CX — Complaint Counsel's exhibit number
RX — Respondents' exhibit number
RPX — Respondent Peska's exhibit number
RAB — Respondents' appeal brief

(Continued)

and two other employees (Tr. 7096), the firm by 1976 employed about 85 people (Tr. 459-61; CX 2790-93) with over 5,000 clients contracting for various services (ID 12, 16) and sales receipts exceeding one million dollars annually. (ID 23)

RLO relies heavily on advertising in newspapers, magazines, and the yellow pages of telephone directories to attract potential [3] clients. Among the major newspapers and magazines used by RLO are *Popular Mechanics*, *Mechanics Illustrated*, *Popular Science*, *Field and Stream*, *TV Guide*, *New York Times*, *Los Angeles Times*, and the *Chicago Tribune*. (ID 6) Advertisements typically stress that "manufacturers need new products," and urge those with an idea for a new product or a way to make an old product better to contact RLO, "the idea people." (CX 20, 26, 29, 31) Other advertisements focus on the services RLO offers: ideas and inventions will be expertly searched, and then developed for commercial appeal and sales to manufacturers. (CX 2a, 7, 16, 28) Many contain information on the background of the director, Raymond Lee. (CX 7, 24, 25, 40) Advertisements with a larger format frequently cite examples of alleged "Client Marketing Successes." (CX 24, 30)

RLO typically invites readers of its advertising to telephone or write "the idea people" for a variety of free brochures, with such titles as "Invention Record Form" (CX 2a, 7, 16, 20), "Directory of 500 Corporations Seeking New Products" (CX 7, 20, 25), "Recommended Protection Procedures" (CX 2a, 7, 25), "Product Marketing" (CX 3), "Inventions - Their Development, Protection & Marketing" (CX 20), and the "Inventors Information Kit." (CX 12, 24)

When potential clients contact RLO for further information they receive free Inventors Information Kits. (ID 29) Each kit consists of a cover folder and various brochures and flyers describing RLO's services.³ Potential clients receive the kit regardless of whether they initiate contact with RLO by sending in a coupon clipped from an RLO advertisement, or whether they write, phone or drop by an RLO office. Although the brochures included in the kit have varied somewhat over the years, the materials usually include information on the background of Raymond Lee, general statements about the

- CAB — Complaint Counsel's appeal brief
- PAB — Respondent Peska's appeal brief
- R.Ans — Respondents' answering brief
- C.Ans — Complaint Counsel's answering brief
- C.Ans P. — Complaint Counsel's answering brief to Peska
- TROA — Transcript of Oral Argument before the Commission

³ Brochures and other written material sent through the mail play a particularly significant role in RLO's sales. The entire course of dealing between RLO and many of its clients is through the mail and telephone conversations, since many clients never visit an RLO office. (ID 37) Most clients talk with account executives or other RLO personnel on the phone at some time during the course of their relationship with RLO, but most of their information about the company and its services comes through the mail.

firm's services, and endorsements from satisfied customers. Case histories of successful RLO clients are also typically included. [4]

The kit is accompanied by a letter addressed to "Dear Inventor." (CX 2604a) One version of this letter emphasizes RLO's "respected credentials," which are assurances of "integrity, experience, and ability to serve you well." The letter quotes an endorsement from an RLO client, an elected Texas county judge, who writes, "[i]t is my belief that if my product cannot be put on the market by The Raymond Lee Organization, it cannot be done." Another theme running through the introductory letter is that time is of the essence. The prospective client is warned that invention rights may be lost if prompt action is not taken.

The cover in which the brochures are placed contains photographs of RLO personnel, identified as members of the Administration, Engineering or Marketing Departments of the organization. (CX 49a, 49c) It is subtitled "Important Information Every Inventor Should Have For The Development, Protection & Marketing of Inventions & Ideas." Information is provided under headings such as "Who needs inventors?", "Why man invents," "Developing your idea," and "The next step." (CX 49b, 49c) The back of the folder tells the reader why RLO was established and describes the services provided by the firm. (CX 49d)

One brochure typically included in the kit, entitled "The Client and The Raymond Lee Organization," contains numerous representations about RLO's services. It states:

You may contact an Account Executive . . . and immediately obtain information you require to initiate the development of a new product, idea or innovation. Seemingly difficult questions and methods of procedure are instantly simplified and stripped of the confusion and complexity ordinarily surrounding them.

This efficiency, accuracy and simplicity requires knowledgeable, responsible, skillful people. We believe this characterizes the Raymond Lee Organization—the desire and ability to be of service. (CX 44e)

[5] The brochure further stresses the expertise of RLO's staff, noting:

They [account executives] are well-educated, highly-trained in their respective fields and have learned their business well A large and able supporting organization has been built at Raymond Lee to serve your account executive It consists of New Product and Invention Researchers, Commercial and Mechanical Draftsmen, Technical Writers, Public Relations and Publicity Representatives, Advertising Specialists, Market Analysts, Library and Industrial Directory Researchers, Licensing and Sales Negotiators and an extensive group of International Associates . . . the men and women of the Raymond Lee Organization, representing years of seasoned experience have a fresh outlook on the potentialities for tomorrow. (CX 44g)

Another publication, "Ideas Go To Market . . . The RLO Way," relates client success stories. (CX 2604b) Foremost among these is the invention and licensing of the Royal Carousal fireplace, a staple in RLO promotional lore. This example, headlined "Fireplace Invention Brings Fame and Fortune to Idaho Inventor" refers to the more than \$60,000 in royalties already received by the inventor, Harold Hannebaum, and contains Mr. Hannebaum's endorsement of RLO services.⁴

It should also be noted that in the bottom corner of the last page of this brochure, in relatively small type, there appear the following words of caution:

It is generally known that relatively few of the new product ideas and inventions that are conceived by industry and individuals ultimately reach the market[6]place, or reap financial rewards for their creators. Therefore, case histories referred to by the Raymond Lee Organization should be considered not typical of all inventions submitted, but simply as examples of some areas of activity in which the company has had experience. (CX 2604b)

Finally, one other pamphlet typically included in the Inventors Information Kit is worth mentioning. (CX 2604c) This brochure is devoted to the "Tale of the Twist-Off - a Product Success Story" reprinted from Innovation World, an RLO publication in magazine format. The article relates how a "fledgling tinkerer and inventor" conceived the idea of a twist-off bottle cap in the 1920's. Although there was some initial success in marketing the product, "the whole rainbow melted, along with visions of the pot of gold," with the onset of the Depression.

In the late 1950's, with the aid of postwar developments in glass and metal technology, the White Cap Company invented the Twist-Off cap. The brochure states that the inventor who had received a patent in 1928 for a similar idea saw the Twist-Off cap made by White Cap and sought advice from Raymond Lee, then a patent attorney in Philadelphia. Although his earlier patents had expired, the inventor had evidence to support a claim of earlier use of the name "Twist-Off." According to the story, White Cap had been unaware of the earlier work on the bottle cap and the earlier use of the Twist-Off name, but Lee negotiated a settlement with White Cap for the inventor. This experience, so the article explains, prompted Lee to respond to the need for a complete service to protect and promote the interests of the small independent inventor. To this end,

⁴ More general testimonials of satisfaction from some 20 RLO clients are set forth in a separate piece of promotional literature. (CX 2604g) Another brochure cites RLO's recognition by government and industry, prominently displaying a photograph of Raymond Lee receiving a certificate of commendation from John Lindsay, then mayor of New York City. (CX 2604d)

he resigned his Patent Office and bar affiliations to establish an organization for invention development and marketing.

The most important document in the Inventors Information Kit, according to RLO's "Dear Inventor" letter, is the Record of Invention form. (CX 2604i) The letter states that the inventor will immediately benefit in two ways by completing the form and returning it to RLO. First, the completed form will serve as documentary evidence of the date of priority for the invention, and second, the form will enable RLO to examine the invention and explain how it would like to proceed. (CX 2604a) The form also contains questions about the invention, which [7] the inventor is asked to answer, and space to provide a written description and sketch of the invention. (ID 33) If the recipient of an Inventors Information Kit fails to return the completed Record of Invention form, an RLO account executive may phone the potential client and urge a prompt response, stating that "time is of the essence." (ID 8)⁵

The return of the completed Record of Invention form to RLO marks the beginning of a client's relationship with the organization. When the form is received at RLO's offices, it is normally assigned to the account executive who handles the state in which the prospective client lives. (ID 8)⁶ Out-of-town prospects are usually contacted by letter or telephone, while New York area residents are asked to visit RLO's offices to discuss the invention. (ID 39) [8]

Regardless of whether contact is by phone, letter or in person, the account executive's presentation is much the same. If the Record of Invention form has already been reviewed by the engineering department, the "Sales Procedure and Administration Manual" instructs the account executive to inform the prospective client of this fact and state that the salesperson would not have been authorized to discuss the matter further if the engineering staff had reason to believe that the invention could not be made or operated, or if it were contrary to accepted scientific principles. (CX 2604z-8) The account executive is further instructed by the manual to ask the inventor whether family and friends believe the idea is practical and

⁵ RLO also uses a CALL-TELEGRAM to spur return of the Record of Invention. It states:

Many people prematurely underestimate the validity of their ideas. Please give me an immediate call—collect. I have three general questions that will help you determine the merit of your idea. (CX2913a) (emphasis original)

⁶ Respondents challenge this finding on the ground that it is inconsistent with ID 93, which states that Record of Invention forms are apparently routed through the engineering department before going to account executives. An account executive testified that it is normal business procedure for the Record of Invention forms to be turned over to the account executives. (Tr. 1546) However, the manager of the New York region testified that the Record of Invention forms are routed through the engineering department before they are turned over to the account executives. (Tr. 1695) Although the record is unclear on this point, the inter-office routing of these forms is immaterial, since the engineering department does not provide any significant review of the forms. See *infra* at pp. 15, 19.

has good marketing potential. The salesperson typically states that RLO is interested in having a patent search done and that this is the first step in putting a product on the market. (Tr. 1529-30) The letter recommending preliminary product research assures customers that RLO has "an understanding of the objects and purposes of your invention" and urges that a patent search be conducted before further steps are taken to develop, manufacture, sell or license the invention. (ID 41)

The contract which the client enters into to have the patent search performed is called the "preliminary product research agreement." RLO offers three kinds of preliminary product research agreements ranging in cost from \$100 to \$300. (ID 10) The cost of a patent search using one researcher is at least \$100. For prices ranging up to \$300, the inventor can have the search performed by two or three researchers working independently.⁷ RLO sold 3,819 preliminary product research agreements in 1974 and 4,938 in 1975. (ID 12) [9]

The agreement specifies that the client has no "expectations of a prior or subsequent evaluation of these proposals by [RLO] or its representatives," and that he or she is "requesting this research for the purpose of providing me with the benefit of personally comparing and evaluating my proposal/proposals with respect to such related U.S. patented inventions as may be located through such research." (CX 201) The agreement also promises that the client will receive copies of the patents that are located plus a statement of RLO's program for marketing an invention, subject to a disclaimer that such information should not be "construed as a recommendation based upon an evaluation of my proposal."

After completion of the patent search, any patents located are forwarded to the inventor with a letter which serves as both a sales presentation and the contract for RLO's development and marketing of the invention. The introductory paragraphs of the development contract warn of the hazards facing independent inventors and small businessmen, including the necessity to retain "engineers, lawyers, draftsmen, technical writers, patent attorneys, marketing organizations, and sales agencies, etc." (CX 100a) It explains that many "informed inventors" prefer to use an organization knowledgeable in the development and introduction of inventions to industry. The contract further recites that as invention developers, RLO has assembled a staff and retains independent contractors for carrying

⁷ The record is unclear on the exact cost for each type of search. One former account executive testified that he sold mostly the \$100 agreements, while Lee testified that the cost of a single search program was \$135-\$165. (Tr. 1510, 4987) One RLO document states that preliminary product research agreements are available for a fee ranging from \$100 to \$300. (CX 2600B) The record contains several agreements for a fee of \$100 (CX 201, 367d) and an agreement for an extended search using two researchers for \$175. (CX 204)

out many of the important steps for introducing an invention to industry. (CX 100a)

Finally, the contract informs the customer that RLO will proceed with the immediate development of the invention in exchange for an assignment of an interest (generally 20 percent) in the invention plus a fee, which ranges from \$775 to \$2,000. (ID 13)* RLO sold 1,498 development contracts in 1974, and 1,585 in 1975. (ID 16) [10]

As its part of the bargain, RLO sets forth in the contract what steps it will take to assist the inventor. (CX 100a) First, RLO will "technically develop and/or refine, if and to the extent necessary, for the preparation of suitable illustrations and description of the commercial features you regard most important." Second, RLO will retain a registered patent attorney or agent to prepare an application for a patent, and will pay its proportionate share of government fees. Third, after patent pending status is achieved, RLO will prepare and print a sales letter and prospectus on the invention. Fourth, RLO will introduce the invention to industry by contacting a substantial number of prospective manufacturers who have notified RLO of their interest in acquiring new products. Next, RLO will establish a campaign to publicize the invention for the purpose of stimulating commercial interest. Finally, RLO will actively negotiate with manufacturers expressing an interest in acquiring rights to the invention.

The development contract further specifies that the inventor will have the option for six months after the agreement to repurchase for \$1,000 RLO's interest in the venture. It also warns that time is often an extremely important factor and that important invention rights are sometimes lost because of unnecessary delay. (CX 100b)

In addition to the basic development contract, RLO offers Canadian and Swiss patent and marketing programs. The cost of the Canadian program ranges from approximately \$500 to \$1,000 plus assignment of a 20 percent interest in the invention to RLO. (CX 2600b) Approximately 10 to 15 percent of clients who contract for the development program also purchase the Canadian program. (ID 17) The record does not reflect how many clients purchased the Swiss program.

Potential clients who decline to enter into either a preliminary

* California law requires invention developers to disclose certain facts and figures about their business practices to potential California clients. (Cal. Bus. & Prof. Code, Chapter 17, § 22370, Division 8) Pursuant to this statute, RLO lists fees for particular programs, including \$1,000-\$2,000 for development contracts. Respondents contend that the ALJ should not have based findings on the California disclosure statement because RLO, forced to estimate and disclose fees by the statute, chose to state a very high range of fees. (RAB at 25) We are not persuaded by this contention. We see no reason why consumers and the Commission should not be entitled to rely upon the truthfulness of statements made pursuant to state law. Of course, for purposes of the issues at stake here, even the lower figure of \$775, contained in some of RLO's development contracts (CX 100a), is substantial.

product research agreement or the development contract, or who already have filed patent applications, are offered a marketing program to introduce the product to industry. (Tr. 1541-42, 778, 802-03, 825-26) Also known as the commission sales agreement, this program resembles the development contract except that no patent application is filed and there is no assignment to RLO of an interest in the invention. The fee for this service ranges from \$400-\$600, plus 20 percent of any proceeds from the sale or licensing of the idea. (ID 15) There is also a program for \$85 which simply involves preparation and mailing of a prospectus to approximately 100 firms that might be interested in the purchase or licensing of the invention. (Tr. 1916-19) [11]

III. RLO REPRESENTATIONS

The complaint alleges that respondents engaged in a wide variety of misrepresentations. Amidst these charges are three which strike at the heart of RLO's method of doing business and are central to the issues in this case. First, it is asserted that RLO falsely claims to provide purchasers with fair appraisals of the patentability or marketability of their inventions. Second, the complaint charges that respondents failed to substantially develop or technically refine clients' ideas as promised. Third, according to the complaint, RLO deceptively represents that it actively and successfully introduces, promotes, and negotiates with manufacturers for the sale or licensing of clients' inventions.

Other allegedly false claims challenged by the complaint include representations that no additional fees, apart from those set forth in the development contract, will be required to obtain a patent or market an invention; that RLO will perform its services in a timely manner; and that public officials have endorsed or utilized respondents services. In addition, the complaint also charges respondents with failing to disclose that as joint owners of a patented invention they may use or sell it without the clients' consent and that respondents are not qualified to file patent applications. These allegations will be discussed in order.

A. *Claims that RLO Evaluates Inventions*

Although RLO does not specifically state that it will evaluate the patentability and marketability of an idea, there is little question that the firm's promotional literature and its entire course of dealing leave clients with the impression that RLO will objectively assess their ideas before advising whether to pursue the patenting and

marketing of an invention. The fact that respondents do not state in so many words "We Evaluate Inventions" is, of course, of little significance, since the Commission is not confined to analyzing isolated words and phrases in determining what representations are being made and whether those representations are false, deceptive or misleading. Instead the Commission may look to the total impression created by words in their context. See *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert. denied*, 430 U.S. 983 (1977); *Continental Wax Corp. v. FTC*, 330 F.2d 475, 477 (2d Cir. 1964); *National Bakers Services, Inc. v. FTC*, 329 F.2d 365, 367 (7th Cir. 1964); *P. Lorillard Co. v. FTC*, 186 F.2d 52, 58 (4th Cir. 1950); *Charles of the Ritz Distrib. Corp. v. FTC*, 143 F.2d 676, 679 (2d Cir. 1944). Although our task would no doubt be simpli[12]fied if firms would always state their claims clearly and forthrightly, experience teaches that representations which violate Section 5 are often found not in bold assertions but in exaggeration, innuendo, ambiguity, half-truths, and the omission of material facts.⁹ Here the evidence establishes that RLO's promotional material and its account executives leave prospective clients with the net impression that respondents will examine an idea or invention and provide a fair and thorough appraisal of its potential for being patented and marketed.

This impression is fostered from the very beginning of a client's contact with RLO. One advertisement exhorts inventors to write for the free Inventors Information Kit which tells how inventions may be "protected, evaluated, developed and negotiated for cash sale or royalty licensing." (CX 24) Another assures the inventor that ideas will be "*honestly and sympathetically* handled Then we examine your work. Make suggestions. Help with research" (CX 12) (emphasis original)

The folio cover of the Inventors Information Kit elaborates on this theme by stating that an RLO account executive, described as "well-educated and highly trained and now a full-time career man in the new-product technology field," will "study your idea honestly and sympathetically without cost or obligation and depending upon its status, suggest a procedure for commencing its development or commercialization." (CX 49c)

RLO frequently implies that it is selective (and hence performs some evaluation) in accepting new ideas for development and marketing. (ID 59) For example, one advertisement states, "If your invention is acceptable, we'll develop it for commercial appeal,

⁹ See, *Regina Corp. v. FTC*, 322 F.2d 765, 768 (3d Cir. 1963); *Feil v. FTC*, 285 F.2d 879, 896, (9th Cir. 1960), quoting Handler, *The Control of False Advertising Under the Wheeler-Lea Act*, 6 Law and Contemp. Prob. 91, 99-100 (1939).

negotiate for Cash Sale or Royalty Licensing.” (CX 19) The cover of the Inventors Information Kit informs prospects, “[h]owever, if we cannot accept your invention or idea for processing, we will promptly inform you of the reason.” (CX 49c) The “Dear Inventor” letter which typically accompanies the Inventors Information Kit contains a nearly identical sentence. (CX 51) This letter also states that the completed Record of Invention form will enable RLO to “examine the invention.” (CX 51) A different version of the “Dear Inventor” letter contains similar representations that RLO will “review” and “examine” the invention. (CX 50) [13]

The Record of Invention form which is included in the Inventors Information Kit states that RLO is being authorized to examine the invention “for the purpose of receiving its comments and suggestions for the international development and introduction of this invention to industry.” (CX 52) A follow-up letter to potential clients acknowledging receipt of the form states that RLO has “completed our examination of it” and goes on to suggest that preliminary product research be conducted. (CX 96a)

The impression that RLO will fairly evaluate ideas submitted to it is reinforced by account executives in selling preliminary product research agreements and development contracts. One former account executive testified that he told potential purchasers of a research agreement that “our people think that the idea is feasible and marketable.” (Tr. 4202) Another testified that he was instructed to tell clients that their ideas were marketable and that RLO would not have sent a marketing proposal if it had not intended to make money on its 20 percent interest in the invention. (ID 67) The record is clear that clients were left with the impression that RLO would evaluate their ideas or inventions to assess the chances for obtaining a patent and achieving commercial success.¹⁰ (ID 74-81) As one client stated:

[W]e both agreed yes, we have a good thing here. Otherwise I would have never followed through on this thing. I am not qualified to make decisions to continue with patent applications, that's why I hired somebody else. (Tr. 8265)

In denying that they make such claims, respondents argue that their research agreements and development contracts clearly alert clients to the fact that they must make their own evaluation of the prospects for their ideas and inventions. To support their contentions, respondents point to language in the research agreement that

¹⁰ It is well-settled that the Commission has the expertise to determine whether advertisements have the capacity to deceive or mislead the public. Consumer testimony, although not essential, is sometimes helpful. See *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 385, 391-92 (1965); *Resort Car Rental System, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975).

information provided by RLO is for the client's "personal knowledge and evaluation." (CX 201) There is also language in the development contract which informs the inventor that the results of the product research are being forwarded to "aid you in your evaluation" of the idea. (CX 840a) [14]

We do not believe, however, that either of these documents is clear on its face as to what RLO does or does not promise. Moreover, neither document is likely to dispel the notion implanted by representations made in advertisements, brochures and conversations with account executives that RLO provides clients with an objective appraisal of an invention's merits. The patent search and development contracts are far more ambiguous in defining the scope of RLO's contractual obligations than respondents would have us believe. For example, the preliminary product research agreement details six separate steps which RLO promises to undertake, including examination of the proposal, classification of the subject matter and field of investigation, research of relevant patent records, and presentation of research results. (CX 201) It is not unreasonable to conclude that a purchaser, particularly one unsophisticated in the ways of patent law, would assume he or she would be getting more from RLO than copies of some patents, notwithstanding the firm's disclaimer about providing a legal opinion on patentability.

Similarly, at the more critical and costly juncture of deciding whether to enter into a development contract, a prospective client is presented with contract terms that reinforce the impression that RLO has the capacity and the incentive to evaluate his or her idea. The development contract emphasizes RLO's knowledge and experience in handling the diversified array of hurdles facing an independent inventor. After describing the advantages of using RLO's services, the contract proposes that for an assignment of a 20 percent interest in the invention, plus a stated fee, RLO will develop and promote the product. We agree with the law judge that it is reasonable to construe this offer as implying that RLO has evaluated the idea, thinks it has merit, and is willing to share the risk of development by taking an interest in the invention as partial compensation for its services. (ID 65) In the words of one client, "I understood that anybody that wants to get 20 percent in my idea must think it was a pretty good idea." (Tr. 4369; *see also* Tr. 3099-3100)

More importantly, the contract disclaimers relied upon by respondents are insufficient to counter the overall impression fostered by RLO's written and oral representations that it provides clients with a fair and thorough appraisal of their ideas. If an initial

contact with a purchaser is deceptive, the fact that the truth may be subsequently revealed will not necessarily eliminate the initial wrong. See *Resort Car Rental System, Inc. v. FTC*, *supra*, 518 F.2d at 964; *Exposition Press, Inc. v. FTC*, 295 F.2d 869, 873 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962); *Carter Products, Inc. v. FTC*, 186 F.2d 821, 824 (7th Cir. 1951). Furthermore, if a representation is capable of being interpreted in a misleading way, it should be construed against the advertiser. See *Simeon Management Corp. v. FTC*, 579 [15] F.2d 1137, 1146 (9th Cir. 1978); *Resort Car Rental System, Inc. v. FTC*, *supra*, 518 F.2d at 964. Here, respondents cannot rely on ambiguous language to dispel the impression left by repeated prior misrepresentations.

That RLO does not evaluate or appraise inventions is not only conceded by respondents (RAB at 30, 33) but is clear from an examination of their practices. The firm's Sales and Administration Manual shows that only minimal standards are employed by RLO in determining whether proposals should be accepted. (CX 2602f) Not surprisingly, inventions which are contrary to accepted scientific principles, including perpetual motion machines and anti-gravity devices, are rejected. RLO also rejects ideas which purport to offer cures for disease or for regenerating human tissue including cancer cures, hair growers, and bust developers. It turns down ideas for methods of doing business, conducting various transactions or merchandising techniques. Printed matter that does not involve a particular method, process, formula or mechanism is also rejected. Finally, the Manual instructs that in addition to these categories of unacceptable items, "[a]ny item of questionable content should be held subject to verification of acceptability." *Id.*

The manager of RLO's Engineering Department, Philip Dicks, testified that RLO also rejects ideas for changes in the material or size of a product already on the market. (Tr. 4741) Si Friedman, supervisor of account executives, testified that items that verge on the obscene are not accepted. (Tr. 6287) Former account executive William Coyle stated that "anything that was obscene or very far out would be rejected, but it would have to be pretty bad." (Tr. 1524-25)

Apart from these rather obvious exceptions, RLO made no attempt to evaluate the commercial merit or the patent potential of ideas and inventions. Account executives are discouraged from evaluating the merit of ideas, and the engineering department does not consider marketing potential in reviewing Record of Invention forms. (Tr. 1680; ID 93-95) Respondents admit that they are not qualified to advise or appraise with respect to patentability (RAB at 32; Tr. 797-801); and the patent attorneys who are retained by RLO to file patent

applications do not evaluate an invention before filing the patent application. (Tr. 797-801, 1023-24) Quite simply, RLO's policy is to sell a patent search and a development contract on virtually all ideas which clients bring in. (ID 93-95) In short, RLO does not deliver what it promises. [16]

B. Claims That RLO Will Substantially Develop and Refine Inventions

The complaint alleges, and the ALJ found, that RLO represents that it will substantially develop or technically refine inventions or ideas submitted to it, but that the firm fails to do so in a significant number of instances. Respondents argue that their claims are carefully couched, citing language in the development contract which states that RLO, in carrying out its part of the bargain, will "technically develop and/or refine your invention, if and to the extent necessary, for the preparation of suitable illustrations and description of the commercial features you regard most important." (CX 100a) Thus, respondents contend, the limited nature of its development service is clearly revealed to potential customers.

Although RLO does not explicitly state that it substantially develops ideas or inventions, we find that its claims clearly imply as much. Once again the representations are made with subtlety and depend on the effective use of innuendo, ambiguity, and half-truths. *See Regina Corp. v. FTC, supra*, 322 F.2d at 768; *Feil v. FTC, supra*, 285 F.2d at 896. We believe it would be unlikely for a potential client to read RLO's advertisements and brochures and come away with the understanding that the frequent references to "develop" and "refine" simply mean preparation of drawings and written descriptions. To illustrate, one brochure contains a section on invention development which emphasizes that:

Invention development is one of the most helpful and valuable services available through the Raymond Lee Organization, Inc. Here the objective of the company is to place the invention or new product idea in a suitable form for presentation to industry. Such a program should include preparation of necessary illustrations and written description of the features considered to be most important and valuable for the manufacture and marketing of the concept. . . . (CX 44j)¹¹

The clear implication is that preparation of illustrations and written descriptions is but one phase of an invention development program, not that it is the whole development program. [17] Numerous other references in RLO's promotional materials also suggest that

¹¹ Other advertisements and brochures indicate that ideas will be "developed for commercial appeal and cash/royalty sales to manufacturers" (CX 2a, 7, 25), or "[w]e will develop your idea, introduce it to industry, negotiate for a cash sale or royalty licensing." (CX 20, 26, 33).

preparation of illustrations and written descriptions is something separate from invention development, or imply that these services constitute just one phase of invention development. (ID 112-17, 119)

Whether a would-be inventor goes to RLO with a well-defined invention, perhaps even with a working model, or simply has an idea that seems promising, RLO's representations strongly suggest that it will provide whatever services are necessary to turn the idea into reality. This theme pervades RLO's promotional literature. For example, a letter sent to clients in the Inventors Information Kit states:

All services, from the initial examination of the invention, to product research, technical development, the preparation of drawings and promotional material and negotiations with industry are performed by persons experienced in their respective fields. (CX 50)

Another brochure claims an invention developer technically develops and refines an invention, but "serves another function, too. He usually takes into consideration such factors as industrial preferences, manufacturers' requirements and consumer appeal." (CX 53d) This publication also states, in advising whether an attorney or an invention developer would be more useful to the independent inventor, that "[i]f the service required is of a technical nature, where a background in design development, manufacturing techniques and sales promotion are [sic] important, the Invention Developer would be more helpful." (*Id.*; see also CX 54d, 55d) Yet another brochure in the Inventors Information Kit represents that RLO will "help develop a comprehensive individualized program for you that is sound and sensible—tailored to the specific needs of your invention." (CX 68a) Similar representations occur frequently in RLO's promotional material. (CX 49d, 96, 174)

Indeed, in contrast to the language relied upon by respondents, other portions of the development contract suggest that development of an idea means more than the preparation of illustrations. Specifically, the second paragraph notes that "inventions to be offered to industry for sale or licensing first require certain technical development, refinement, and safeguards, *as well as* preparation of important presentation material." (CX 100) (emphasis added)

The contract then describes how RLO provides a comprehensive service for inventors, thereby making it unnecessary to retain engineers, lawyers, draftsmen, technical writers, patent attorneys, marketing organizations, and sales agencies. The contract language, when viewed in its entirety is at best ambiguous, and it is reasonable

for customers to conclude that it promises more than respondents claim it does. [18]

Consumer testimony indicates that clients in fact believed RLO would make substantial contributions to the development of their ideas. Dr. Alberto Giaquinto, who came to RLO with an idea for an automobile ignition system based on fingerprints, testified that as a result of RLO advertising he believed:

They would develop your idea from the beginning to the end and that you did not have to be a scientist or engineer, that they had a staff of people that would develop and present your idea to industry. That's what I thought, they would present my idea, which is all I had, an idea. (Tr. 4495-96)

Dr. Giaquinto added, "[s]o I assumed they were going to take it all the way from my idea to a finalized blueprint that an engineer could actually read and make a working model of." (Tr. 4500) Other clients testified that "this company took care of everything it seemed" (Tr. 3141), that RLO offered a "package deal" (Tr. 3152), and that they took care of "the whole thing." (Tr. 2121)

Despite representations about RLO's extensive and experienced staff of experts, including "New Product and Invention Researchers, Commercial and Mechanical Draftsmen [and] Technical Writers" (CX 44g), the record establishes that RLO does little or nothing with clients' ideas and inventions except prepare drawings to accompany patent applications. Representatives of RLO, including respondent Lee, testified that the firm was primarily concerned with the preparation of illustrations, with embellishments considered at various stages of preparation. (Tr. 4726, 5065-68) For those who come to RLO with only an idea for a new product, RLO does little more than describe that idea visually and verbally on paper. The firm does not perform independent research or tests of clients' ideas or inventions. (ID 106) It does not routinely prepare working models of ideas or inventions;¹² nor does it test products to see if and how well they work or how they might be improved. Moreover, RLO does [19] not advise on materials to be used or conduct research about what changes or features might make an item more marketable. (ID 106)

Accordingly, we find that, contrary to its representations, RLO does not substantially develop or technically refine ideas or inventions submitted to it.¹³

¹² The record reflects the unhappy experience of RLO client Allen Guerard who ordered a model of his invention, a device to hold ketchup bottles together so that the leftover ketchup in one bottle would drain into the other. Guerard ordered a model of his idea from RLO at a cost of \$517.50, which was in addition to the \$1,072.50 already paid to RLO and other fees paid to the patent attorney. A satisfactory working model was never built but we take no position on whether this was because the model was deficient, or because the idea itself was inherently flawed. (Tr. 3185-871, 7740-48)

¹³ In so concluding, we do not rely on the ALJ's assumption that any modifications suggested by RLO are

C. Claims That RLO Actively and Successfully Introduces and Promotes Inventions

The law judge found that, as the complaint alleges, RLO falsely represents that it actively and successfully introduces and promotes its clients' ideas and inventions to industry. (ID 58) We affirm.

RLO argues that its promotional material does not refer to or imply special access by RLO to corporations (ID 44), and that many corporations do seek new products through RLO. (RAB at 27) The first contention is without merit. RLO hints time and again in its promotional material that it has been retained by corporations seeking new product ideas. A detailed brochure, "The Client and The Raymond Lee Organization," lists one of RLO's activities as "actively seeking new products *on behalf of* major corporations and assisting in the manufacture and marketing of new product concepts." (CX 44e) (emphasis added) [20] Under the heading, "Introductions to Industry," the brochure says that RLO is in "continuous contact with leading companies in the U.S. and abroad" and claims the organization is in a position to "introduce virtually any new product, idea or concept to selected companies." (CX 44-o) The brochure also refers to these companies as "our clients," implying that RLO is paid by these corporations to search for new product ideas. (CX 44q)¹⁴

Another publication cited by the ALJ (ID 48), entitled "The Raymond Lee Organization Internationally Known," reproduces letters from corporations and clients, as well as awards and citations. (CX 80) The brochure's cover is a montage of letterheads from such diverse groups as General Motors, Lockheed, the Indiana State Bar Association, Massachusetts Institute of Technology, The Austrian Trade Delegate to the United States, and the Federal Trade Commission. Respondent Lee testified that the montage was used to "graphically illustrate the fact that [RLO was] known internationally amongst various types of organizations." (Tr. 5098) While it is certainly true that RLO was known to the Federal Trade Commission, we believe that this misuse of the Commission's name is a classic case of deception resulting from omission of a material fact; namely, the nature of the Commission's interest in RLO. The record does not reflect why and in what context the other organizations listed had occasion to know of RLO. This particularly blatant bit of deception and the excuses offered for it by respondents are indicative

relatively trivial because RLO does not profess to be a co-inventor of its clients' inventions. (ID 122, 123) RLO could make substantial and significant contributions to the development of an invention and still not be required to file as a co-inventor under 35 U.S.C. 116. See *Hobbs v. United States Atomic Energy Commission*, 451 F.2d 849, 864-65 (5th Cir. 1971); *P&D Sales & Mfg. Co. v. Winter*, 334 F.2d 830, 836 (7th Cir. 1964).

¹⁴ One additional brochure typically included in the Inventors Information Kit is entitled "500 Corporations Seek New Products Through The Raymond Lee Organization." (CX 78)

of the extent to which RLO was willing to use deceptive and misleading representations to create a favorable image of the company's record and reputation. [21]

It is clear that RLO enjoys no special relationship with corporations, nor does it have numerous corporate clients who retain it to seek out new product ideas. What it does have is a list of manufacturers who have indicated they would like to receive announcements of new inventions in their product lines. (RX 671-709) These manufacturers were initially contacted by RLO and asked if they wanted to receive free prospectuses on inventions and the free RLO publications "New Product Bank" and "Innovation World." Quite naturally, these firms were not unwilling to receive new ideas and, according to an RLO representative, some 2,500 replies were received. (Tr. 7801-04)

In attempting to market a client's invention, RLO mails prospectuses to a "substantial number" of companies on its list that conceivably might be interested in the product. (Tr. 7797-804) No other direct contacts are made, except to respond to the few requests it gets for more detailed information. The record contains some conflicting evidence as to how accurately the announcements are targeted to firms with related product lines. Although several witnesses from manufacturing firms testified that the prospectuses they received from RLO were within their product lines (Tr. 5907, 7329), other evidence indicates that the mailing system was hit or miss, and that RLO inundated companies with ideas that were totally unrelated to their product lines. (Tr. 398j, 1221, 3195-96, 1929-35) But even assuming that RLO competently compiles lists and sends invention announcements to manufacturers in relevant product areas, this activity does not comport with the representations made by RLO. In particular, the phrases "on behalf of major corporations," "maintain continuous contact with leading companies . . . on a regular basis," "[RLO] is in a position to introduce virtually any new product ideas . . . to selected companies" and "we can supplement our clients' search for new product ideas" imply that inventors will get more for their money than a mass mailing. (CX 44-46, 67, 75, 78)

The prospectuses that are sent to manufacturers on the mailing list contain a brief description of the invention followed in virtually all instances by nearly identical boilerplate paragraphs asserting that "there is a growing demand for a product of this type" and that the product "fills a long-felt need in a convenient, effective manner and at a cost within the budget of the ultimate user." Each prospectus also claims that "[e]xisting facilities may be utilized to

minimize tooling and production costs" and that "[s]tandardization of components will minimize inventory costs." (CX 2657a-b - CX 2697a-b) [22]

RLO contends that its promotional program includes more than the introduction of inventions to industry through mass mailings. It also includes a follow-up program and publicity for clients' inventions. (RAB at 29) The effort to obtain publicity for clients' inventions, which RLO lists as part of its promotional campaign, consists of boilerplate press releases sent to newspapers near inventors' hometowns. A press release typically includes a paragraph or two about the invention followed by equal space devoted to RLO and its business. (CX 1110, 1571a) Although the press releases occasionally succeed in sparking some local publicity for an inventor (CX 1115, RX 116), they are of little benefit in promoting the invention to prospective manufacturers. These efforts do not reflect the kind of thorough, aggressive marketing plan that respondents purport to provide to their customers.

The complaint also alleges that RLO represents it will successfully introduce and promote the inventions of its clients. RLO does not take issue with this allegation¹⁵ but argues that it successfully introduces clients' inventions to manufacturers (RAB at 28) and that it successfully promotes these inventions. (RAB at 29) The record, however, establishes that respondents' lack of success in introducing or promoting inventions is notable, and that very, very few clients achieve any measure of success with their inventions. (ID 58) Respondents' dismal success record is discussed in detail below in Section V. As the ALJ summed up,

RLO's entire advertising representations, oral representations by Account Executives, and its method of operation are designed to create in the minds of potential clients the definite understanding that their invention has been examined and studied by a competent, knowledgeable and experienced organization who has determined that the idea or invention is worthy of presentation to industry and that there is a good chance it will be successful. (ID p. 123)

[23] Quite simply, the picture respondents paint of their marketing efforts and successes does not correspond with reality. We conclude

¹⁵ RLO attacks the ALJ's reliance in ID 54 on the testimony of former account executives who were fired and were in litigation with RLO. (RAB at 27) The law judge expressly considered and rejected respondents' arguments concerning the credibility of several of its former employees. (ID p. 143) We do not believe the ALJ erred in giving weight to the testimony of these witnesses. Such testimony is consistent with the testimony of other witnesses and with documentary evidence relied upon by the law judge. (See ID 49-52)

that RLO, as the complaint alleges, failed to live up to the claims it made in connection with the marketing of inventions.¹⁶

D. *Other Claims*

The complaint alleges that respondents made other misrepresentations and failed to disclose certain material facts. With one exception,¹⁷ the ALJ sustained these allegations. At issue are charges involving RLO's use of the names, photographs and quotations of public officials, respondents' claims concerning their status as registered patent attorneys, and RLO's non-disclosure of information about additional client fees and its rights as an interest holder in the inventions of its customers.

The representations previously discussed—that RLO will evaluate an idea, develop or refine it, and then introduce and promote it to industry—describe the very services that RLO purports to offer the inventing public. While the representations under challenge here do not go directly to the heart of respondents' operations, they do encompass peripheral claims designed to enhance RLO's image as a firm of experience and integrity. [24]

In a series of findings (ID 169-84), the ALJ describes respondents' practice of using in promotional materials the names and photographs of prominent public officials along with quotations from these officials impliedly endorsing RLO. The quotations were typically lifted from routine responses written by public office holders to letters from RLO describing the services it offers that might be of interest to constituents.¹⁸

RLO contends on appeal that the photographs and quotations were accurate and true, and that there is no evidence that their use had the tendency or capacity to mislead anyone into believing that these people endorsed or used RLO. (RAB at 39) We disagree. The fact that the quotations are accurate is, of course, beside the point. That words and sentences may be literally true does not necessarily prevent them from being used to mislead or deceive. *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 675 (2d Cir. 1963); *Koch v. FTC*, 206 F.2d 311, 317 (6th Cir. 1953). We believe that RLO's use of the names, photographs, and words of public officials had the tendency and capacity to

¹⁶ Although the complaint alleges that RLO claims to introduce, promote, and negotiate with manufacturers on behalf of clients, there is little record evidence about negotiations. Since efforts to introduce and promote inventions stimulate so little interest there is little opportunity for negotiations to occur. However, there is no evidence to indicate that RLO failed to negotiate with manufacturers that expressed interest in an invention.

¹⁷ The ALJ found that complaint counsel had not met its burden of proof as to unnecessary delay by RLO in obtaining patent protection for its clients. (ID 160) This finding was not appealed.

¹⁸ The list of office holders includes several Governors and Members of Congress. Respondents' Motion for Inclusion of Certain Exhibits and Renumbering of Others, January 30, 1978, which concerns documents related to this issue, is hereby granted.

deceive and mislead consumers into believing that these officials recommended or endorsed the organization. It is, of course, unnecessary to establish that actual deception has occurred to find a violation of the Federal Trade Commission Act. *Simeon Management Corp. v. FTC*, *supra*, 579 F.2d at 1146 n.11; *United States Retail Credit Ass'n, Inc. v. FTC*, 300 F.2d 212, 221 (4th Cir. 1962); *Charles of the Ritz Distrib. Corp. v. FTC*, *supra*, 143 F.2d at 680.

To be sure, public officials are frequently photographed with constituents and exchange of correspondence is a common occurrence. But there is quite a difference between the display of such pictures and communications as mementos and their inclusion in promotional materials in a manner which implies endorsement of the products or services offered. That respondents' actions here had the capacity to deceive potential customers can be fairly inferred from an examination of RLO's promotional brochures that contain references to the statements of public officials. (ID 169-72) Testimony by RLO clients and public officials, who strongly objected to respondents' use of their names, pictures and quotations, further underscores the deceptive potential of RLO's practices. (ID 173-74, 179, 182-83).¹⁹ [25]

We also uphold the law judge's finding that respondents failed to disclose the material fact that they were not registered patent attorneys or patent agents and were not qualified to practice before the United States Patent Office. Respondents frequently list the background and qualifications of Raymond Lee in promotional material for RLO. (CX 2-3, 49, 53-55) Advertisements, brochures, and letterheads list Lee's educational background (degrees in industrial engineering and law) as well as his professional background before he became an invention developer. The promotional material typically states that Lee is a former United States Registered Patent Attorney, Canadian Patent Agent, United States Patent Office Examiner, and Department of the Army Patent Advisor. (CX 2604k, 60d, 44d, 53a). The question is whether the qualifying word "former," which consistently appears in these materials, prevents or cures any misleading or deceptive impression that would otherwise arise. We conclude that, in context, it does not.

In so concluding, we note that respondents' customers lack familiarity with the intricacies of patent law and the legal limitations on the patent advice and services respondents may provide. (ID 151, p. 129) Given this situation, it is not unreasonable to

¹⁹ Respondents assert that the Commission is without jurisdiction to act against the unauthorized use of the names and photographs of public persons and that we seek to enforce a private right of action. (RAB at 39) This contention is without merit. Whether a private right of action exists is of no relevance in determining whether there is a violation of Section 5.

assume that potential clients of RLO would rely on respondents' representations concerning their legal qualifications and expertise. Our concern is with how these persons perceived RLO's representations since the capacity of a representation to deceive must be determined in light of the sophistication and understanding of the group to whom it is directed. *Beneficial Corp. v. FTC, supra*, 542 F.2d at 618; *Aronberg v. FTC*, 132 F.2d 165, 167 (7th Cir. 1942). The law is not made for the protection of experts but for the public who may be governed by appearances and general impressions. *Helbros Watch Co., Inc. v. FTC*, 310 F.2d 868, 869 n.4 (D.C. Cir. 1962), *cert. denied*, 372 U.S. 976 (1963); *P. Lorillard Co. v. FTC, supra*, 186 F.2d at 58; *Florence Manufacturing Co. v. J. C. Dowd & Co.*, 178 F. 73, 75 (2d Cir. 1910). [26]

RLO's promotional materials stress that it provides patent-related services to its clients. Although RLO denies offering "patenting services" to inventors (RAB at 25), it clearly represents that it offers services involving patents, regardless of how those services are described.²⁰ Patents are featured prominently in its advertising (CX 3, 28, 40), and there are additional references to the protection of ideas and inventions. (CX 49, 19) "Patent research" and "patent marketing" are listed as separate services on its letterhead. RLO frequently refers to the high qualifications of its staff and its expertise in dealing with inventions, including expertise in patents. In one brochure, RLO states:

Our Product Research Department will act as your Intelligence Agency [to] probe and study . . . related records of the United States Patent Office. They search prior U.S. patents They wind their way through Patent Office records and corridors often talking to Patent Office Examiners . . .

Each person in our Product Research Department . . . is a specialist in his field, in some cases having been an Official Examiner in the U.S. Patent Office where he received his "basic training." (CX 44i)

[27] The cover of the Inventors Information Kit also represents under the heading "Safeguarding your invention" that "We can help you establish 'International Rights of Priority' for your invention." (CX 49d)

In this context it is not surprising that RLO clients believe that respondent Lee is a patent attorney and that RLO is qualified to

²⁰ Respondents correctly observe that the ALJ's citations do not support his finding that RLO provides patenting services to clients. (ID 5) The exhibit and the testimony relied upon refer only to Napatco, Inc. and National Patent and Trademark Company in connection with patent services. (CX 2606u-w) Respondent Lee is a partner and officer of these companies, which provide patent and trademark services for attorneys. (*Id.*: Tr. 434-435) In finding that respondents offer "patenting services" or "patent-related services," we rely on respondents' advertising, promotional materials and language in the preliminary product research agreement. (*See, e.g.*, CX 2-3, 53-55, 60, 201)

perform patent-related duties. (ID 149) To be sure, respondents do disclose that in those cases where RLO enters into a joint venture agreement with an inventor for the development and marketing of a product it will retain the services of a registered patent attorney to establish patent pending status. In our view, such limited disclosure is insufficient to alert clients that RLO has no one on its staff to file patent applications or give advice about the patentability of an invention.

Moreover, respondents' use of the word "former" in describing the patent qualifications of Raymond Lee, while technically and literally true, is ambiguous and has the capacity and tendency to leave clients with the mistaken notion that respondents are qualified patent attorneys. It is well established that partial truths can be as misleading and deceptive as outright misrepresentations. *L. G. Balfour v. FTC*, 442 F.2d 1, 17 (7th Cir. 1971); *P. Lorillard Co. v. FTC*, *supra*, 186 F.2d at 58. Advertisements may be deceptive if they have the tendency or capacity to convey misleading impressions to consumers even though other non-misleading interpretations may also be possible. *Chrysler Corp. v. FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977). Here we have partial truths sprinkled among representations that impart the overall impression that respondents are qualified to provide advice and services which, in fact, they cannot provide. We find that respondents failed to disclose material facts about their status, or lack thereof, before the Patent Office.

Respondents also contest the ALJ's finding that they failed to disclose material facts concerning the consequences of an assignment of an interest in a patent. RLO's development contracts typically provide that the inventor assigns a twenty percent interest in the invention to RLO. (ID 161) This interest is recorded in the Patent Office whenever a patent issues on an invention that is the subject of a development contract. Patent law provides that, absent an agreement to the contrary, a joint owner of a patent may make, use or sell the patented invention without the consent of other joint owners. (35 U.S.C. 262) Thus, a joint owner of a patent may exploit the patent without making any accounting or reckoning to other joint owners, and without being subject to a lawsuit for an accounting. (Tr. 1100-01, 3251) No doubt such information would be of importance for anyone considering the assignment of an interest in a patent.

The record is clear that RLO did not disclose this information to clients, either before or after they assigned an interest in the invention to RLO. However, the record is also clear that [28] RLO never attempted to make, use or sell an invention in which it was

owner without the consent of the inventor or without accounting to the joint owner. There is no indication that respondents ever tried to take advantage of clients' vulnerability under 35 U.S.C. 262. While under other circumstances the failure to disclose such information might be deceptive, we do not find that to be the case here.

Finally, respondents also take issue with the law judge's finding that they failed to disclose the material fact that additional fees might have to be paid. The development contract provides that RLO will undertake the steps necessary to develop an invention and introduce it to industry in exchange for an assignment of a twenty percent interest in the invention, plus a stated flat fee, which has varied over the years. The contract further recites that respondents "will pay our proportionate shares of Government fees and, if prosecution of the patent application is agreed upon, we will pay our proportionate shares of those fees or costs upon which we mutually agree." (CX 100a, 367). It is this last phrase that respondents rely on to support their contention that the potential extra cost is clearly disclosed.

We disagree that this vague provision alerts clients to the fact that invariably they have to pay substantial extra fees if they follow through with RLO's program. The clear message conveyed by respondents' advertising and promotional materials, as well as the development contract itself, is that RLO provides a package of services for inventors—from patent search, to development of the idea, to filing a patent application, and finally to marketing the invention to industry. Moreover, the development contract specifically states that there will be no additional cost to the client for the retention of an attorney to file a patent application. Under these circumstances, customers of RLO could be expected to conclude that there would be no charges in addition to the flat fee and minority interest, except for relatively minor government filing fees.

The record, however, reveals that substantial additional legal fees are regularly required in the course of prosecuting a patent application. This is due to the fact that patent applications are frequently rejected in their initial form, thereby requiring that amendments be filed if the patent is to be pursued. Such an occurrence is not peculiar to the inventions handled by RLO or to the patent attorneys it retains to file and prosecute applications. (Tr. 7-58, 2871-72) The attorney's fee for filing an amendment, as disclosed in the record, typically ranges from \$75-\$135. (ID 135) Moreover, as the law judge noted, even the government patent fees are substantial. Not only is there a Patent Office filing fee of \$65 but, if a patent is granted, there is a minimum issuance fee of \$112. In

addition, the fee for recording RLO's [29] interest in the invention is \$20. (ID 135) Though clients may be willing to pay these extra charges, the development contract fails to disclose adequately the nature or magnitude of these additional costs.

In view of these facts, we believe that respondents' representations about the cost of their services were misleading. To prevent deception, respondents should disclose the likelihood that significant additional fees will be required.

IV. VALUE OF RLO'S SERVICES

In addition to the specific misrepresentations alleged, the complaint charges that respondents' unfair or deceptive practices have induced persons to pay substantial sums of money for services that are of little or no value to them and respondents have failed or refused to refund the money. The use of these practices by respondents and their continued retention of monies received is alleged to be an unfair act or practice and a continuing violation of § 5. These allegations were upheld by the ALJ. Respondents counter by claiming that they perform a useful and valuable service for which clients pay fair and reasonable compensation. (RAB at 40) They also question the legal authority for the allegations, citing *Heater v. FTC*, 503 F.2d 321 (9th Cir. 1974). (RAB at 40)

It seems beyond dispute that the Commission may condemn practices that deceptively induce persons to purchase virtually worthless services. See *Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1179-81 (1975), *aff'd mem. sub nom. Turner v. FTC*, 580 F.2d 701 (D.C. Cir. 1978); *Universal Credit Acceptance Corp.*, 82 F.T.C. 570, 648-51 (1973), *rev'd in part sub nom. Heater v. FTC, supra*, 503 F.2d 321 (refund provisions set aside); *cf. Windsor Distrib. Co.*, 77 F.T.C. 204, 215-17 (1970), *aff'd*, 437 F.2d 443 (3d Cir. 1971).²¹ Similar issues are involved here. As we discuss more fully below, the record evidence demonstrates that a gross disparity exists between the value of services provided by RLO, and what customers are led to expect. Whether viewed in an absolute or relative sense, RLO clients get little or nothing out of the bargain. Even if RLO's services as performed have some marginal value beyond that which the Commission found in *Koscot, supra*, such limited value clearly is insufficient to overcome the basic unfairness and deception t

²¹ Even if we were precluded from ordering refunds or restitution for past practices, see *Heater v. FTC, supra* (position we do not concede), the Commission clearly is not precluded from fashioning whatever prospective relief is appropriate to prevent the repetition of such unfair or deceptive practices. See *Warner-Lambert Co. v. FTC*, 503 F.2d 749, 757 n.33 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978); *Firestone Tire & Rubber Co.*, 81 F.T.C. 370 (1972), *aff'd*, 481 F.2d 246 (6th Cir. 1973), *cert. denied*, 414 U.S. 1112 (1973) and cases cited therein.

inheres in the sale of services that have no reasonable prospect of achieving the results claimed.

Moreover, apart from the cases cited above, additional support for the legal theory being pursued here can be found [30] in both the common and statutory law to which we frequently look for guidance in determining whether particular acts or practices are unfair or deceptive.²² For example, courts have ordered relief where sales have been induced through fraudulent misrepresentations and the products or services involved are of little or no value,²³ or where the price paid is grossly disproportionate to reasonable market value.²⁴ Thus, to allege that it is an unfair act or practice for a respondent to sell worthless or near-worthless services by inducing purchasers to enter into the transaction through material misrepresentations simply brings within the context of Section 5 a well-established principle of common and statutory law.²⁵ [31]

We have already dealt at length with the numerous deceptions and misrepresentations that characterize respondents' business practices and will not discuss them further in detail.²⁶ Our focus here is whether such misrepresentations and deceptions induce inventors to pay substantial fees to RLO and whether they receive in return services of little or no value. In deciding whether to enter into a contract with RLO, prospective clients frequently rely on respondents' representations about their experience and expertise and about the services they purport to perform for their clients. It takes little more than a look at the facts and figures of respondents' business to conclude that its services have no reasonable prospect of

²² See *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n.5 (1972) citing the Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 F. R. 8324, 8355 (1964):

(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen.)

²³ See, e.g., *Vertes v. GAC Properties, Inc.*, 337 F. Supp. 256, 258, 261 (S.D. Fla. 1972) (rescission ordered where sale secured through misrepresentation about its value and other characteristics); *Kugler v. Romain*, 58 N.J. 279 A.2d 640, 653 (1971) (contract unconscionable where price was 2 1/2 times reasonable market price, and act—"educational" children's books—had little or no value for purposes represented); cf. *Lefkowitz v. ITM*, 275 N.Y.S.2d 303 (1966) (injunction ordered where consumers induced to pay exorbitant, unconscionable for products because of fraudulent statements).

See, e.g., *Toker v. Perl*, 103 N.J. Super. 500, 247 A.2d 701 (1968), *aff'd*, 108 N.J. Super. 129, 260 A.2d 244 (1970); *v. Westerman*, 113 N.J. Super. 452, 274 A.2d 78 (1970); (price which is 2 1/2 times retail value is unconscionable); *Jones v. Star Credit Corp.*, 298 N.Y.S.2d 264 (1969) (unconscionable to sell for \$900 freezer with retail value of \$300); *American Home Improvements v. MacIver*, 105 N.H. 435, 201 A.2d 886 (1964) (unconscionable where \$2,568 home improvements contract included \$1,600 in finance charges and sales on).

also section 2-302 of the Uniform Commercial Code, which permits reformation of a contract if any of its including price, is unconscionable.

ALJ has summarized the most pertinent in ID 185-93.

achieving the results claimed and its clients receive virtually nothing of value in exchange for the fees they pay to RLO.

In 1974 RLO sold 3,819 preliminary product research agreements, typically for \$100 each. In 1975, the number increased to 4,938. (ID 12) The researchers who conduct the preliminary patent searches are independent contractors located in Washington, D.C. and Virginia, near the Patent Office, who are paid \$5 to \$8 by RLO on a *per-search* basis, plus the costs of patent copies, postage and photocopies. (ID 11) One patent law expert testified that the usual patent search takes a minimum of four or five hours, and that a patentability search is "essential" before filing a patent application. (Tr. 3276-77) It would appear that a patent search taking four or five hours time is unlikely to be performed for \$5 to \$8, and that the patent searches conducted for RLO clients are something less than adequate.²⁷ Several witnesses testified that the patent searches for RLO clients typically yielded only limited information and were poorly conducted. (ID 197) [32]

After patents are located in the Patent Office, they are mailed or shown to the client for the client to evaluate and compare with his or her own idea or invention. (ID 198) A patent law expert testified that sending patent copies to laypersons was "irrelevant" since they are incapable of making informed judgments about patentability. (Tr. 3247) The Deputy Solicitor of the Patent Office testified that merely providing copies of prior patents and asking the inventor to make his own evaluation, "forces the inventor to be his own patent counsel" (Tr. 1090), adding that the inventor is not in a position to assess patentability in any objective way. (Tr. 1090-91) No employee of RLO is authorized to render a patentability opinion and the record is clear that they do not provide such opinions. Although patent practitioners are routinely retained by RLO to file patent applications, they do not meet with RLO clients to counsel about the advisability of pursuing a patent in light of what turns up in the preliminary product search. (ID 199)

RLO encourages inventors to pursue the patenting and marketing of an idea even when its staff knows or should know that the chances of success are nil. (ID 205-06) For example, RLO does not advise inventors as to possible duplication of their ideas with those

²⁷ RLO contends that it is wrong to compare the preliminary product research agreement to a patent search inasmuch as it does not purport to be a patent search and should not be judged by those standards. (RAB at 4) However, the terms of the research agreement specifically state that the program includes compilation of pertinent data and instructions for research of U.S. Patent Office records, classification for subject matter and field of investigation, research of records of prior U.S. patents pertaining to the invention, and procurement from Patent Office of copies of related patents. (CX 201) RLO has not meaningfully distinguished its activities from patent search nor did it make any such distinction evident to its customers. Moreover, as we have previously shown, respondents make many other representations about the patent services they provide.

submitted by other RLO clients. One former account executive testified that he received certain ideas many times:

I received inventions, for example, an invention like a toothbrush with the toothpaste in the handle many times, sold searches on each and every one of them; dog feces picker-uppers, many of those; toothpaste dispensers, many of those; automatic jacking systems, many of those; hoop type toys, people who were trying to emulate . . . the success of the hoop, the Hula-Hoop . . . (Tr. 4227)

He also testified that he told clients every time that the preliminary patent search results indicated "go." (Tr. 4262) [33]

Consumer testimony establishes that prospective clients entered into preliminary product research agreements because they relied on RLO's representations that experienced and expert assistance would be provided in getting patents. One inventor testified that he examined a patent found during the preliminary patent search but "didn't think it was close enough to bother mine. Being that I was advised to go ahead, apply for a patent, I figured [RLO] didn't figure these would knock mine out either." (Tr. 2376; CX 1209) The witness further added,

Well, I knew they looked to see if anything was patented like mine and then I knew this would be sent to [RLO] and I hoped if there was anything close to mine they'd advise me whether I should go ahead or not, which they did. They advised me to go ahead. (Tr. 2430-31)

Other clients related similar experiences. (ID 81, 84)

When forwarding copies of patents obtained in the preliminary patent search, RLO also sends a development contract. In 1974 RLO sold 1,498 development contracts; in 1975, 1,585. (ID 16)²⁸ The record indicates that the price range for development contracts is \$775 and up.²⁹ We have previously discussed RLO's misrepresentations about its development and marketing services, including consumer reliance on such representations, and will not go over this ground again. *See supra* p. 18. Rather, we focus our attention on the usefulness of RLO's promotional and marketing efforts, since those efforts are central to the value of the invention services purportedly offered by respondents. [34]

Marketing experts, patent attorneys, and RLO clients testified about the inadequacies of RLO's system for attempting to promote its products to industry. Dr. Gerald G. Udell, Associate Professor of

²⁸ Total revenue figures are: 1972 - \$1,396,264; 1973 - \$1,241,822; 1974 - \$1,115,354. 1975 figures were received in 1976. (ID 23)

²⁹ The record includes less expensive development contracts, but shows that fees have risen over the years. One account executive testified that development contracts were \$975 when he started in 1974, and were up to \$1,375 when he left in 1975. (Tr. 4225) RLO states in the California disclosure statement that the fee range is from \$1,000 to \$2,000. (CX 2600b)

Marketing and Director of the Experimental Center for the Advancement of Inventions and Innovations at the University of Oregon, testified that the independent inventor typically lacks the necessary expertise to evaluate the marketability of his or her invention. (ID 204) Patent counsel testified that they invariably advise unsophisticated, independent clients about the small chance of ever making money on an invention. A patent attorney retained by RLO to handle patent applications also stated that he will not file a patent application for his non-RLO clients unless some market for the invention can be shown. (ID 203)

Respondents do not perform, or have anyone else perform, any analysis to determine if a market exists for a particular idea. The president of a company that specializes in new product marketing and development, Eugene M. Lang, testified that studies or test data are necessary to support a claim to prospective manufacturers that a market exists for a particular product. (ID 206) Professor Udell observed that promotion of unevaluated ideas is highly ineffective because it clogs the channels of distribution with ideas that lack feasibility, which raises search costs to corporations seeking new ideas. (*Id.*)

More specifically, many witnesses criticized RLO's method of marketing new ideas and inventions to prospective manufacturers. Mr. Lang thought little of the prospectuses sent out by RLO, noting that they contain "rote observations" about production feasibility and market demand. In addition, he characterized some of the inventions as being "clearly ridiculous." (ID 208) Another licensing expert, John S. Yates, also criticized the boilerplate language in the prospectuses and observed that they frequently disclose inventions that lack novelty. (ID 209) Vere L. Hageman, a mechanical engineer and a corporate manager of new product development, testified that many of the prospectuses contain old ideas; some are "technically impractical, maybe even bordering on stupid"; while others are incomprehensible. (ID 210) After examining several RLO prospectuses, Robert Goldscheider, a marketing expert, acidly commented that:

I believe that none of these prospectuses, not a single one, can be given serious credence by a serious businessman. They are superficial. They are incomplete. They are uninformative on truly meaningful points, and I'm seriously doubtful a market even exists for any of these things as set forth in these [prospectuses]. (Tr. 5260-61)

[35] Clients who followed up on the marketing of an idea invariably found that the prospectus mailing list was haphazardly compiled and

included companies that had gone out of business, were in entirely different product lines or had never received the prospectus. (ID 215)

The dismal success record of RLO lends further support to our conclusion that their services are of little or no value. RLO negotiated only eight licenses for its clients during the eight-year period from 1968 to 1976. (ID 194) Four of these licenses were for the same invention, a product called the Carousel Fireplace. (CX 3037; Tr. 5119) Furthermore, pursuant to California law, RLO discloses that of the approximately 30,000 inventors it has assisted, only three received more money as a result of RLO's services than they paid to the firm in fees. (CX 2600a) Although the figures are not precise in terms of whether RLO's service is getting better or worse over time, the inescapable conclusion is that very, very few of RLO's clients receive services of any value from RLO, despite the substantial sums paid to respondents.³⁰

In reaching this conclusion we are cognizant of the fact that services of value can be rendered which do not result in licenses, profits or other tangible measures of success. For example, a service of considerable value could be rendered by objectively examining an invention and advising the inventor, if appropriate, that his or her idea has little merit and less chance of success. Although this kind of service is harder to quantify and might not appear in RLO's track record, the simple fact is that RLO does not provide that kind of honest advice to its clients. Rather, respondents encourage inventors to pursue the patenting and marketing of ideas or inventions through purchase of RLO's programs, even when RLO staff knows or should know that there is little chance of receiving a patent and even less of realizing any degree of commercial success.

Respondents contend that inventors are motivated by more than the prospect of financial gain, and that RLO offers services of value because it assists inventors in achieving non-monetary rewards. (RAB at 41-42; CX 2600a) Although we have no doubt that inventors have a sense of self-satisfaction and pride in their work, particularly if the work results in a [36] patent, it is clear that RLO's clients are not contracting with the organization for pride and self-satisfaction.³¹ They are contracting for the services which RLO has represented it will provide. That respondents benefit from the often

³⁰ We give little credence to respondents' contention, which has no record support, that many clients may successfully market their inventions without RLO's knowledge. (RAB at 30) As the ALJ succinctly put it, "[i]t is incredible to contend that any significant number of clients have successfully licensed inventions partially owned by RLO without RLO having some knowledge of this fact and participating in the rewards." (ID p. 134)

³¹ We note in passing that the record is filled with the testimony of clients who found that their relationship with RLO was a source of frustration and disappointment rather than pride and self-satisfaction. (See, e.g., Tr. 1831, 3185-88, 3195-3213).

unrealistic optimism of home inventors, coupled with their lack of sophistication, only underscores the gravity of the law violations.

The one RLO service that may have been of some marginal value to some inventors is assistance in obtaining patents, but even here RLO has a poor performance record. Since 1968, RLO has recorded only 590 patent assignments, which represents about a 20% patent issuance rate. (ID 201) In 1974, 1,498 clients entered into development contracts and 217 clients obtained patents (about 14.5%); the comparable figures for 1975 are 271 patents issued for 1,585 development contracts (a 17% issuance rate). (*Id.*) To put these figures into some perspective, we note that patents were issued in approximately 66% of all patent applications filed with the Patent Office. (ID 200)

More importantly, a patent does not mean that the invention will be marketed, much less that it will be a commercial success. (ID 202) This is illustrated by the cold facts of the record, namely the disparity between the 590 patents RLO assisted its clients in obtaining and the number of inventions it has licensed to industry—eight licenses on five inventions. It also bears repeating that customers are contracting for a complete service that purports to encompass much more than assistance in obtaining an unmarketable patent.

In our view, the record convincingly demonstrates that respondents provide worthless services that bear little resemblance to what they tout in their advertising, promotional, and sales pitches. These unfair and deceptive practices are exacerbated by respondents' acceptance and retention of the substantial fees that inventors pay in the reasonable hope and expectation that respondents will provide the expert assistance they represent. We conclude that the complaint allegations have been sustained. [37]

V. RESPONDENT PESKA

In holding respondent Peska liable for acts and practices at RLO that violated Section 5, the law judge looked to Peska's long association with the company, his position as Vice President after RLO was incorporated and his active participation in and control over such activities as sales, advertising, public relations, and employee supervision. (ID 220-25) Having concluded from this that the individual respondent had been responsible for the challenged acts and practices, the law judge then considered whether an order should be entered. Based on evidence that Peska, after leaving RLO, engaged in practices similar to those under challenge here through his own firm, Lawrence Peska Associates, Inc. ("LPA"), the ALJ

concluded that order coverage should be extended to this respondent. (ID 226-31, p. 146-47) We affirm.

Respondent Peska claims that he played a subordinate role in the affairs of RLO; that he severed his relationship with the firm nearly three years before the complaint was issued; that the Commission is unlawfully attempting to try his firm, LPA, *in absentia*; and that the order as to him is unconstitutionally vague because of the dissimilarities between his business and that of the other respondents. (PAB at 1-6) However, the record evidence does not support the relevance of the second contention or the correctness of the others. Instead it establishes that Peska played a major role for eight years in the formulation and execution of exactly those aspects of RLO's activities which are the subject of this proceeding. (ID 221-25) Moreover, the evidence pertaining to respondent Peska's business activities after leaving RLO, which the law judge properly admitted for purposes of ascertaining the need for relief, establishes that Peska has continued to engage in invention development efforts similar to those of RLO. (ID 226-31)

In determining whether individual liability should attach to actions that also involve a corporate respondent, the Commission may consider a variety of factors, including the nature and scope of the unlawful practices, the individuals's involvement with those practices, and his or her role in the corporate entity. *See National Housewares, Inc.*, 90 F.T.C. 512, 598 (1977) and cases cited therein. Peska makes much of the fact that he was neither a director nor a shareholder in RLO (PAB at 4), but it is clear that this is not dispositive of the liability of an individual who is instrumental in formulating or carrying out challenged acts and practices. The Commission's authority to find liability on the part of individuals has been upheld for principals, presidents, board chairmen, directors, officers, organizers, managers, and employees. *See National Housewares, Inc., supra*, 90 F.T.C. at nn. 36-43. The record supports Peska's own admission that he was second-in-command to Lee in the operation of all phases of the business (CX 374C; ID 221), and Peska cannot rely on the fact that he did not own stock in RLO nor sit on the board of directors to absolve him of responsibility. [38]

The foregoing considerations are quite sufficient to establish respondent Peska's liability for the challenged acts and practices. Peska was intimately involved in the illegal conduct for many years. The fact that he severed his relationship with RLO before the complaint issued could, at most, bear on the issue of whether, notwithstanding his violative conduct, Mr. Peska should be excluded from any order that issues. Here, however, the respondent can

hardly attempt to argue that he has "abandoned" the challenged practices when the evidence shows that he continues very similar activities in his own closely held corporation.³²

It is well established that the Commission has broad authority to fashion relief necessary to assure the effectiveness of its orders, including binding individuals to prevent recurrence of unlawful activity for which they have been responsible and prevent circumvention of orders by changes in the form of a business or its ownership. See, e.g., *FTC v. Standard Education Society*, 302 U.S. 112, 119-20 (1937); *Rayex v. FTC*, 317 F.2d 290, 295 (2d Cir. 1963). Such relief is appropriate when it is "necessary to close off any wide 'loophole' through which the order might be evaded." *Coran Bros. Corp.*, 72 F.T.C. 1, 24-25 (1967); accord, *Benrus Watch Co. v. FTC*, 352 F.2d 313, 325 (8th Cir. 1965), cert. denied, 384 U.S. 939 (1966); *Carpets "R" Us, Inc.*, 87 F.T.C. 303, 319-20 (1976). In this case it seems quite fair to say that the challenged practices were perpetrated by individuals acting through a corporation. Under such circumstances, an effective order must cover the activity of the responsible individuals should they attempt to repeat the same activities through a different corporate guise. In affirming a Commission order binding an individual respondent who had resigned as officer and director and disposed of his stock in the corporate respondent before the order was entered, the Second Circuit noted that the individual respondent "was included not because he was still an officer or stockholder of the offending corporation but because he himself had participated in the use of unfair and deceptive acts or practices in commerce. [The corporate respondent] is not the only vehicle through which such acts may be accomplished in the future." *Consumer Sales Corp. v. FTC*, 198 F.2d 404, 408 (2d Cir. 1952). Respondent Peska is included in this order for precisely the same reasons. Without his inclusion a loophole would indeed exist through which the order might be evaded.

In fashioning appropriate relief we have paid particular attention to Peska's assertion that an order as to him would be "incomprehensible." (PAB at 5) Without passing judgment on the legality of his current idea promotion activities, we are satisfied that the relief ordered, including the affirmative disclosure provisions, are not only appropriate but necessary to ensure that the practices found unlawful here do not continue to be perpetrated by respondent Peska. [39]

³² Even had it been shown, as it has not been, that respondent had discontinued the unlawful activity before issuance of the complaint, that would not necessarily be grounds for omission of an order where the public interest otherwise required it. See *Fedders Corp. v. FTC*, 529 F.2d 1398, 1403 (2d Cir.), cert. denied, 429 U.S. 818 (1976).

VI. CLAIMS OF DENIAL OF DUE PROCESS

In addition to the substantive issues previously discussed, respondents contend on appeal that they have been denied due process in these proceedings. First, respondents contend that statements by Commission staff to the press constitute evidence of prejudgment and bias. Some of these statements were the subject of an earlier motion by respondents that was denied by the Commission.³³ Second, they assert that complaint counsel refused to negotiate in good faith to settle the matter. (RAB at 5, 12-24) For the reasons stated below, we believe these contentions are without merit.

Respondents note that the Commission has authority to alert the public to suspected violations of law through the issuance of factual press releases. (RAB at 12) *Lehigh Portland Cement Co. v. FTC*, 291 F. Supp 628 (E.D. Va. 1968), *aff'd*, 416 F.2d 971 (4th Cir. 1969); *FTC v. Cinderella Career and Finishing Schools, Inc.*, 404 F.2d 1308 (D.C. Cir. 1968). They object, however, to staff statements about the invention promotion industry generally and some statements about RLO in particular. Most of the statements to which RLO continues to object on appeal were considered by the Commission in its earlier order. There the Commission stated that it expects counsel appearing before it to comply with Disciplinary Rule 7-107(H) of the Code of Professional Responsibility. The Commission determined that only the alleged comments by counsel of record should be considered in the context of the adjudicative proceeding and that the record did not establish any violations of the Code of Professional Responsibility. Respondents raise no issues here that would convince us that the original ruling was incorrect.

Respondents Raymond Lee and Raymond Lee Organization, Inc. have also filed post-oral argument motions that raise similar issues of prejudgment and bias. The first motion involves a conversation that complaint counsel allegedly had with counsel for a party in private litigation with RLO.³⁴ The second involves a network television program that focused on RLO's [40] activities,³⁵ and the third centers on a "Clearance Request and Notice of Action" filed with the Office of Management and Budget.³⁶ These motions are

³³ Respondents' motion for a mistrial, suspension of hearings and other relief was filed December 14, 1976, as supplemented by letter from respondents' counsel December 15, 1976. The ALJ's denial of the motion was issued January 5, 1977. Some of the issues were certified to the Commission on January 12, 1977. The Commission denied the motion on April 5, 1977.

³⁴ Motion for an Order Dismissing Complaint or Directing Complaint Counsel to Cease Ex Parte Communications, February 6, 1978.

³⁵ Motion for an Order Directing Hearing to Determine Prejudice, May 17, 1978.

³⁶ Motion for Injunction and Other Relief, July 31, 1978.

based on highly speculative facts and a distorted view of the law of prejudgment and bias. Each is hereby denied.

In the first motion, respondents allege that complaint counsel advised an attorney representing a private party who was engaged in litigation or contemplating litigation against RLO to include a particular theory in the case. In RLO's view, this ethical error was compounded by providing unsound legal advice. Respondents claim that this alleged conduct violates the Code of Professional Responsibility, specifically Ethical Considerations 2-7 and 2-4. These provisions prohibit providing advice to a layperson which may result in litigation from which the lawyer can expect a benefit. RLO's own version of the events does not evidence any violation of these Ethical Considerations since the contact, according to RLO, was with counsel, not a layperson, and since the contention that benefit will redound to the Commission attorney because RLO will have more fires to fight is, we believe, without merit.

RLO also contends that the alleged conduct violates Section 5.10 of the Commission's Rules of Practice, which prohibits actions that might result in the loss of complete independence or impartiality, (Section 5.10(d)), or that adversely affect the confidence of the public in the integrity of the government. (Section 5.10(f)). We find nothing in Section 5.10 or in the facts alleged to warrant the relief requested.

The second motion asks for an evidentiary hearing to determine whether any Commissioner, any member of a Commissioner's staff, or any other employee involved in the proceeding saw a television program concerning RLO,³⁷ and to disqualify any Commissioner who watched the program or whose staff members saw it. The evidentiary hearing would also determine whether Commission employees instigated or assisted in the preparation of the program. [41]

Respondents have cited no authority to support their contention that a Commissioner who viewed a television program that concerned a matter under adjudication by the Commission would be disqualified from further participation in the proceeding. Nor have they cited authority for their supposition that a Commissioner would be disqualified from participating in a matter if a member of a Commissioner's staff viewed such a program. The Commission deals frequently and fairly with well-publicized matters and need not be sequestered from news accounts to assure respondents of its impartiality. Its obligation is to decide cases on the basis of the evidence before it, not on the basis of media accounts. The Commission can find no basis in fact or law for respondents'

³⁷ The program in question was an April 23, 1978, telecast of the CBS Show "60 Minutes," which included an account of RLO's operations.

contention that viewing a television program would give rise to the kind of bias or prejudice that could serve as the basis for a motion for disqualification.³⁸

The Commission has determined that an evidentiary hearing is not necessary in this matter since no basis for disqualification would exist, even if the Commissioners or their staff members had viewed the television program. If a substantial showing of bias or prejudgment has been made, an evidentiary hearing may be appropriate to determine the extent of that bias or prejudgment and whether it warrants disqualification. *See Amos Treat & Co. v. SEC*, 306 F.2d 260 (D.C. Cir. 1962). However, no such showing has been made here, and an evidentiary hearing on this issue would serve no purpose.

Respondents also contend that an evidentiary hearing is necessary to determine if Commission employees instigated or assisted the research, documentation or preparation of the television program, and to disqualify any Commissioner on whose staff such employees work. Respondents attempt to build a chain of circumstantial evidence of such assistance by asserting that the producers of the program could not have obtained the information used in the program without the help of Commission personnel. Similarly, they contend that because a portion of the program was filmed at the U.S. Patent and Trademark Office, Commission employees must have provided assistance to the producers of the program. Such speculative contentions are frivolous and do not warrant an evidentiary hearing.³⁹ [42]

Respondents' latest motion seeks relief because Commission staff has filed with the Office of Management and Budget a form entitled "Clearance Request and Notice of Action" that requests clearance for a questionnaire which would gather information on the idea and invention promotion industry. Respondents' motion appears to assume the results of such a survey would become part of the record of this case. Such an assumption obviously is erroneous and the motion is denied.

We have dealt at some length with respondents' contentions of bias and unfair treatment because these charges have been raised so frequently and so vigorously throughout this proceeding. We note that none of the numerous allegations of prejudicial or biased conduct involves the Commission, any individual member thereof, or

³⁸ If the Commission determined that mere viewing of a television program, absent other evidence of predisposition or prejudice, could serve as grounds for disqualification, it would adhere to a standard that the courts have refused to apply to jurors who render verdicts in well-publicized criminal trials. *See United States v. Haldeman*, 559 F.2d 31, 60-62 & n.35 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977).

³⁹ We note that the record of this proceeding is public, complaint counsel deny providing any such assistance and the Commission is not aware of any assistance provided by staff personnel.

the Administrative Law Judge. At most, respondents would impute to the Commission a bias alleged of staff, but they have shown no basis for assuming such a link, even if staff bias had been shown, and it has not been. Administrative agencies are entitled to a presumption that they will act properly and according to law. *See, e.g., FCC v. Schreiber*, 381 U.S. 279, 296 (1965); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). Respondents have failed to present any evidence to counteract the presumption that the Commission will reach a decision fairly and impartially on the basis of the record before it.

The second aspect of respondents' two-pronged claim of denial of due process stems from the conduct of consent negotiations before the hearings commenced. Respondents use harsh words to characterize the settlement proceedings that eventually broke down, asserting that complaint counsel were vindictive and retaliatory, threatening respondents with lengthy and expensive litigation if they did not agree to restitution, which, RLO contends, was beyond the Commission's power to order. Respondents admit there is no due process right to settle a case, but rest their claim on the grounds that they have a right to be treated fairly in the conduct of settlement negotiations.

Once all the outrage expressed by respondents about this issue is cleared away, not much remains of the claim. Respondents may have been close to a negotiated settlement with only some minor points left to be resolved, and complaint counsel may or may not have "renege" on some of the issues. Even if the facts are as respondents portray them, they hardly rise to the level of a violation of due process. Respondents admit they can find no precedent in administrative law that would support their claim; they turn instead to criminal cases. Although they suggest that lack of precedent is due to the fact that complaint counsel's conduct is unprecedented in the annals of administrative law, the record does not indicate that these were more or less than hard-fought negotiations that did not end as respondents would have wished. [43]

VII. RELIEF

Respondents challenge virtually every provision in the ALJ's proposed order (RAB at 53-55), placing considerable emphasis on what they believe to be constitutional infirmities in the recommended relief. We have fully considered respondents' contentions in adopting the order we enter here.

As respondents note, it is now established beyond dispute that there is no commercial speech exception to the First Amendment.

See *Bates v. Arizona*, 433 U.S. 350 (1977); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Bigelow v. Virginia*, 421 U.S. 809 (1975). It is equally clear, however, that commercial speech does not enjoy the same measure of First Amendment protection as political speech and that commercial speech that is false, deceptive or misleading is subject to regulation. See *Bates v. Arizona*, *supra*, 433 U.S. at 383-84; *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, *supra*, 425 U.S. at 771-72 and n.24. In *Ohrlick v. Ohio State Bar Association*, 436 U.S. 447, 456 (1978), the Supreme Court explained why noncommercial speech is accorded a greater measure of protection than commercial speech:

To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression.

The First Amendment protection afforded commercial speech is based not only on the right of speakers to deliver commercial messages but also on the right of consumers to receive such messages. See *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, *supra*, 425 U.S. at 756-57; *National Commission on Egg Nutrition v. FTC*, 570 F.2d 157, 162 (7th Cir. 1977), *cert. denied*, 99 S. Ct. 86 (1978). The interest of consumers in receiving commercial speech is "served by insuring that the information is not false or deceptive, and, in fact, coincides with the public interest served by regulation." *National Commission on Egg Nutrition v. FTC*, *supra*. As the Supreme Court noted in *Bates*, [44]

the public and private benefits from commercial speech derive from confidence in its accuracy and reliability. Thus, the leeway for untruthful or misleading expression that has been allowed in other contexts has little force in the commercial arena. 433 U.S. at 383.

There is no doubt that the Commission has broad discretion in its choice of remedies deemed appropriate to correct unlawful practices. See *FTC v. Colgate-Palmolive Co.*, *supra*, 380 U.S. at 392; *FTC v. Cement Institute*, 333 U.S. 683, 726 (1948); *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 611 (1946); *Simeon Management Corp. v. FTC*, *supra*, 579 F.2d at 1147; *L. G. Balfour Co. v. FTC*, *supra*, 442 F.2d at 23. Nevertheless, where First Amendment rights are concerned, the Commission must exercise care in fashioning a remedy that goes no

further than is reasonably necessary to prevent recurrences of the violations uncovered. *See Warner-Lambert Co. v. FTC, supra*, 562 F.2d at 758. Within this context, we have revised the ALJ's order in several significant respects. In modifying the order we focused on reconciling two goals: preventing respondents from deceiving or misleading inventors, while allowing them latitude in the proper conduct of their business.

A. *Misrepresentations*

We have made several changes in Part I of the ALJ's order, which prohibits certain representations. Paragraph 1 has been modified to permit respondents to represent truthfully that they retain patent attorneys and patent agents if they in fact do so. We believe that the order proposed by the ALJ was overbroad in not making allowance for this.

The prohibition on evaluation or appraisal claims has also been modified to permit such representations but only if respondents, in fact, provide fair, competent, and objective evaluations of ideas and inventions. In view of the central role that these claims play in inducing would-be inventors to purchase respondents' services, it is important to provide some reasonable criteria for determining the accuracy of any evaluation claims should respondents attempt to provide such services in the future. Before respondents could represent that they offer evaluations, they would have to conduct honest and competent analyses of the feasibility of inventions as well as the market conditions and demand for such products. This would include at a minimum the necessary research to determine whether similar products are already on the market and the nature of any markets that may exist for a particular invention.

Further, we have eliminated the absolute prohibition on three related representations about financial gain, successful marketing efforts and client earnings. (See Part I, paragraphs 4 and 6 of the ALJ's proposed order). Rather, our order will permit representations so long as they are made in conjunction with a disclosure of respondents' track record in assisting inventors. [45] (See Part II, paragraphs 2-4) It is grossly deceptive for respondents to represent that inventors can reap financial benefits through their services, or to imply such gains by touting their promotional efforts, when clients virtually always pay more money to the firm for its services than they get back through sales or licensing of their inventions. We believe, however, this deception can be cured by the simple measure of disclosing the facts. If respondents choose to tell prospects about possible financial benefits they may do so as long as they disclose

what is, to date, the dismal truth about the prospects for financial rewards.

The instructions in Part II, paragraph 5(a) for calculating the track record disclosures allow respondents to draw the figures from any three of the past five years. Since respondent Peska has conducted his own business for six years, he will be able to prepare separate disclosure figures that accurately reflect his own recent performance in assisting clients. He will not be disadvantaged—or advantaged, as the case may be—by having to rely on the record compiled at RLO since his departure from that firm.

Similarly, rather than prohibit outright all representations relating to atypical earnings, our order requires that earnings claims about specific individuals or clients generally must be accompanied by a disclosure of respondents' track record in helping its clients make money from their inventions. We recognize respondents' dilemma if they are prohibited from making accurate representations about one client's earnings unless that experience is typical of all clients. This would, of course, effectively prohibit all earnings claims since the typical client suffers a net loss in attempting to market ideas or inventions through RLO. (ID 58)

Although respondents suggest that inventors who seek to market their inventions through other means fare no better, the record is silent on this. It may well be that the typical clients of even the most competent and ethical invention developers do not regularly derive substantial earnings from their inventions. Thus, recognizing the risks inherent in invention marketing, the order permits respondents to tell truthful success stories, even if those stories involve clients whose earnings are atypical. However, failure to disclose that it is atypical for an inventor to earn money through respondents would be deceptive. *National Dynamics Corp.*, 82 F.T.C. 488, 564-65 (1973), *remanded in part* 492 F.2d 1333, 1335 (2d Cir. 1974), *modified*, 85 F.T.C. 391, 393-94 (1975), *reconsideration*, 85 F.T.C. 1052, 1053-54 (1975), *cert. denied*, 419 U.S. 993 (1974). This deception can be prevented if respondents disclose with each earnings claim how many clients receive a net financial gain from their dealings with respondents.

As for development claims, the record is clear that the only task that respondents perform that could be considered "development" or "refinement" is the preparation of drawings for use in filing a patent application. (ID 123) In the course of preparing such drawings, respondents sometimes fill in details. However, to call this quite limited service develop[46]ment or refinement is deceptive and must be corrected. If respondents choose to represent that they develop or

refine ideas or inventions, they must accompany such representations with a disclosure that this entails only the preparation of illustrations and patent drawings. To assure effective compliance, the order specifies the following disclosure that respondents must make: "Our role in the development of your idea or invention is limited solely to the preparation of illustrations and drawings." Respondents are, of course, free to accurately list and truthfully describe any additional specific services they offer. They may not, however, hide the limited nature of the service they provide behind grandiose terms which promise much more.

Respondents are also prohibited from representing that manufacturers are seeking new product ideas through them or that they have special access to businesses, unless they are in fact retained by corporations or organizations. Although the complaint does not have a precise corresponding charge, it alleges that respondents represent that they actively and successfully introduce and promote inventions to industry. Both the scope of this charge and the evidence introduced pursuant thereto encompass representations that respondents have special access to business and have been retained by corporations to seek out new product ideas on their behalf. Since the record establishes that respondents have no more access to particular corporations or to industry in general than would anyone with a mailing list of manufacturers' names and addresses, respondents' representations to the contrary would be deceptive.

Finally, we have added a separate provision that prohibits misrepresentations about any material aspects of respondents' idea promotion practices. We have also included a provision prohibiting certain misrepresentations by individual respondents in the event they leave the idea promotion business and go into other businesses that offer services or programs to assist clients in making money. Respondents, through RLO, carried on a successful business operation for many years, based in large measure on misrepresentations. Given the severity and duration of the unlawful practices, which could easily be transferred to other enterprises, there is a need to ensure that individual respondents do not transfer the same unfair practices to a new context. The Commission's authority to fence in respondents by prohibiting practices similar to those found to be unlawful is well established. *See FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 393 (1959); *Fedders Corp. v. FTC*, *supra*, 529 F.2d at 1401.

B. *Affirmative Disclosures*

The order requires respondents to make certain affirmative disclosures that differ from those proposed by the ALJ. In addition to

the affirmative disclosures discussed above, which are triggered when respondents make certain representations, a more detailed disclosure statement, set forth in Appendix A of the order, must be included in each piece of promotional literature, other than media advertisements, and furnished to customers in conjunction with all client contracts. The Appendix A disclosure statement incorporates a modified version of the [47] "track record" disclosure proposed by the ALJ, plus a statement that additional fees may be required to follow through with the program and disclosure of the fact that respondents do not evaluate the merits of an idea, unless they, in fact, do so fairly, competently and objectively. We have added the disclosure that respondents do not evaluate product feasibility or marketability because they do not provide such services and their claims to the contrary play a key role in inducing customers to purchase respondents' services.

The disclosures that we order here combine two different sections of the ALJ's proposed order and are considerably shorter. Moreover, we require these disclosures only in promotional literature such as brochures and pamphlets and with contracts, both situations where space limitations are not a problem. Considering that respondents' advertisements in print media are usually small classified or display ads in magazines, newspapers, and telephone directories, we have deleted the requirement that each and every advertisement contain a disclosure statement. A short track record disclosure notice must be used in advertisements only when respondents choose that forum to make certain representations about financial success that, as discussed above, would be misleading and deceptive if not accompanied by disclosure of material facts.

In order to avoid unnecessary burden or expense in complying with this provision, we have specified that respondents may choose any three of the past five years, which need not be consecutive. Thus, respondents will not have to update the figures every year, unless they choose to do so. Additionally, we believe that this flexible time frame should give respondents reasonable opportunity to license or sell inventions and to determine whether their marketing efforts have achieved the minimal degree of success necessary to enable purchasers to recoup the fees paid to respondents.

The record strongly establishes the need for such affirmative disclosure provisions. Even though the order prohibits certain specific misrepresentations, there is no assurance that respondents will not skillfully continue to combine exaggeration, innuendo, half-truths, and omission of material facts to obscure the truth about their services. Indeed, the nature and the pervasiveness of respon-

dents' misrepresentations convince us that crucial information should be brought to the attention of inventors who are considering paying substantial amounts of money to respondents for the services they purport to offer. The Commission has wide discretion in fashioning a remedy deemed adequate to cope with unlawful practices. As the Supreme Court has noted, the Commission need not confine its roadblock to the narrow lane the transgressor has traveled but may close all roads to the prohibited goal, so that an order may not be bypassed with impunity. *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); accord, *FTC v. National Lead Co.*, 352 U.S. 419, 429 (1957). Here respondents have followed a particularly complex route that is not easily mapped nor easily stopped by roadblocks that simply prohibit specific kinds of representations.

Respondents contend that the Commission is without power to order affirmative disclosures except under very narrow circumstances, citing *Warner-Lambert Co. v. FTC*, *supra*, 562 [48] F.2d at 762. Respondents incorrectly read that decision as limiting the Commission's power to order affirmative disclosures to instances where they are necessary to eliminate a lingering misimpression that has been created by advertising alone. (RAB at 48) On the contrary, the court noted that corrective advertising is not an innovation: "The label may be newly coined, but the concept is well established. It is simply that *under certain circumstances an advertiser may be required to make affirmative disclosure of unfavorable facts.*" *Id.* (emphasis added.) In short, corrective advertising, as used in the context of that case, is simply a term describing one set of circumstances in which the Commission is empowered to order affirmative disclosures.

There are numerous cases holding that it is a violation of Section 5 to fail to disclose material facts if the effect of nondisclosure is that substantial numbers of the public are likely to make purchasing decisions based on false beliefs, whether those beliefs are attributable to past representations or are likely to result if future advertising is left untouched. The Commission's power to require affirmative disclosures to prevent deception is well established.⁴⁰

⁴⁰ See, e.g., *Portwood v. FTC*, 418 F.2d 419, 424 (10th Cir. 1969); *J. B. Williams Co. v. FTC*, 381 F.2d 884, 891 (6th Cir. 1967); *Waltham Watch Co. v. FTC*, 318 F.2d 28, 32 (7th Cir.), cert. denied, 375 U.S. 944 (1963); *Keele Hair & Scalp Specialists, Inc. v. FTC*, 275 F.2d 18, 23 (5th Cir. 1960). See also, *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, *supra*, 425 U.S. at 771-72 n.24.

Disclosure of specific facts has been required even in the absence of affirmative misrepresentations.⁴¹ The Commission has also required disclosure notices and warnings for possible product hazards,⁴² and to notify consumers of their legal rights in certain transactions.⁴³ Thus, we believe it is clear that the Commission may require affirmative disclosures where necessary to prevent the repetition of false or misleading representations. Here we have tailored the disclosures in a way which accomplishes the desired remedial objectives while recognizing the need to treat media advertising differently from respondents' promotional literature and contracts. [49]

In determining what disclosures should be required, we have deleted several recommended by the ALJ. First, we have dropped the provision in Part IV, paragraph 1(b) of the law judge's order relating to rights of co-inventors because under the circumstances we do not believe this information is necessary to prevent deception. We have also eliminated the cautionary warning to consult an independent patent attorney in Part IV, paragraph 1(c) of the proposed order. Although this might be wise advice, we do not find it necessary to require its inclusion. Finally, we have deleted the requirements in Part V of the ALJ's order regarding disclosure of time schedules, and the furnishing of written progress reports. Although delay is frustrating at best, in the absence of a finding that respondents unduly delayed fulfilling their contractual obligations, we are reluctant to impose such an order provision.

C. Other Provisions

The law judge included a provision in his recommended order providing a 3-day cooling-off period for customers to change their minds about going ahead with contracts for respondents' services. We modify this provision to exclude contracts negotiated and executed exclusively by mail or telephone.⁴⁴ The record does not show that a right to cancel is necessary in such instances. However, where the cooling-off period does apply, we believe that a 10-day cancellation period, as provided in the Notice Order, should be afforded rather than the 3-day period recommended by the ALJ. A

⁴¹ See, e.g., *Beneficial Corp. v. FTC*, *supra*, 542 F.2d at 620-21 (uses of financial information must be disclosed); *Brite Mfg. Co. v. FTC*, 120 U.S. App. D.C. 383, 347 F.2d 477 (D.C. Cir. 1965) (*per curiam*) (country of origin); *Bantam Books, Inc. v. FTC*, 275 F.2d 680 (2d Cir.), *cert. denied*, 364 U.S. 819 (1960) (abridgment of paperback books); *Kerran v. FTC*, 265 F.2d 246 (10th Cir.), *cert. denied*, 361 U.S. 818 (1959).

⁴² The Commission has required that cigarette advertising affirmatively disclose the Surgeon General's determination that cigarette smoking is dangerous to health. See *Lorillard Co.*, 80 F.T.C. 455 (1972).

⁴³ See *Portwood v. FTC*, *supra*, 418 F.2d at 424; *All-State Indus. of N.C., Inc. v. FTC*, 423 F.2d 423, 425 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970).

⁴⁴ This exemption is similar to that contained in the Commission's Cooling-Off TRR, 16 C.F.R. 429 (Note 1(a)(4)), except that in-person contact between respondents and their customers would render the exemption inapplicable only if it occurs before the contract has been signed by a customer.

longer period is appropriate given the complexity and financial obligations associated with these transactions.

In addition to the cooling-off period, we retain other provisions of the law judge's order requiring respondents to deliver copies of the order to their sales personnel, provide 30-days advance notice of corporate changes, and provide notice of the dissolution or commencement of invention-related business activities. As to the latter requirement, we have limited it to 10 years so that individual respondents will not have a lifetime obligation. Finally, respondents are not relieved as a result of this order from any other obligations imposed upon them by federal or state law. If those obligations are inconsistent with the requirements of this order, respondents must notify the Commission of the inconsistency and request advice as to their compliance responsibilities. Inasmuch as other laws and regulations (*e.g.*, Cal. Bus. & Prof. Code, Chapter 17, § 22370, Division 8) may also address the activities under scrutiny here, we have included this provision to facilitate respondents' compliance with the order.

Raymond Lee Organization, et al., Dkt. 9045 Synopsis of
Determinations for 15 U.S.C. 45(m)(1)(B)

In order to facilitate application of the Commission's holdings in this case to others who may be engaged in the same practices as respondents, pursuant to the provisions of 15 U.S.C. 45(m)(1)(B), [Section 205 of the Magnuson-Moss Act], the Commission has determined to set forth in synopsis form a statement of the acts or practices determined to be unfair and deceptive in this proceeding.¹ The followings acts or practices are unfair or deceptive trade practices and are unlawful under Section 5(a)(1) of the Federal Trade Commission Act:

1. It is an unfair or deceptive act or practice for a seller of idea or invention promotion or development services to misrepresent, directly or indirectly, that potential purchasers will be provided with evaluations or appraisals of the patentability, merit or marketability of ideas or inventions.

2. It is an unfair or deceptive act or practice to represent, directly or indirectly, that the seller of idea or invention promotion or development services, or its officers, agents, representatives or employees are registered patent attorneys or patent agents, or are

¹ The Commission in its discretion has prepared a synopsis of its determinations in this case in order to simplify application of these determinations to other cases. Such a procedure is not required by 15 U.S.C. 45(m)(1)(B).

qualified to practice before the U.S. Patent and Trademark Office, unless such is a fact.

3. It is an unfair or deceptive act or practice to misrepresent, directly or indirectly, the scope, nature or quality of the services performed to develop or refine ideas or inventions.

4. It is an unfair or deceptive act or practice to misrepresent, directly or indirectly, the scope, nature or quality of the services performed to introduce or promote ideas or inventions to industry.

5. It is an unfair or deceptive act or practice to represent, directly or indirectly, that a seller of idea or invention promotion or development services has special access to manufacturers or has been retained to locate new product ideas, unless such is a fact. [2]

6. It is an unfair or deceptive act or practice to misrepresent, directly or indirectly, that a person, partnership, corporation, government agency or other entity endorses or uses the services of a seller or provider of services.

7. It is an unfair or deceptive act or practice for sellers of idea or invention promotion or development services to fail to disclose, when price information is provided to potential purchasers, all significant fees or charges that may be incurred by purchasers in connection with such services.

8. It is an unfair or deceptive act or practice to misrepresent, directly or indirectly, the background, qualifications, experience or expertise of a seller or provider of services.

9. It is an unfair or deceptive act or practice for a seller of idea or invention promotion or development services to induce through misleading or deceptive representations the purchase of services that have little or no inherent value, or to offer to provide services that grossly exceed the value of the services actually provided. It is also an unfair or deceptive act or practice to retain money from the sale of such services.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondents from the initial decision, and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having determined to deny the appeal of respondents and sustain the initial decision with certain modifications: [2]

It is ordered, That the initial decision of the administrative law judge, pages 1-156, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent

inconsistent with, modified or otherwise indicated in the accompanying opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is, entered:

ORDER

I

It is ordered, That The Raymond Lee Organization, Inc., a corporation, its successors and assigns, Raymond Lee, individually and as an officer of said corporation, Lawrence Peska, individually and as a former officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, with the exception of those offering patent and trademark services to attorneys and registered patent agents only, in connection with the advertising, offering for sale or sale of services relating to the introduction, promotion, development, licensing, marketing or sale of ideas or inventions to industry, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any of respondents, or their officers, agents, representatives or employees, are registered patent attorneys or patent agents, or are licensed, recognized or qualified to prepare, file, amend or prosecute patent applications before the United States Patent and Trademark Office, or before any patent offices located in foreign countries, unless such is a fact. [3]

2. Representing, directly or indirectly, that respondents provide potential purchasers of their services with an evaluation or appraisal of the patentability, merit or marketability of their inventions or ideas, unless respondents provide fair, competent, and objective evaluations or appraisals of such inventions or ideas.

3. Representing, directly or indirectly, that corporations or other business organizations are seeking inventions, new products or new product ideas through respondents, or that respondents have any special access to such corporations or other business organizations, unless respondents are regularly retained by corporations or other businesses to find new product ideas. Where respondents represent that they have access to, or are retained by, specific corporations or

business organizations, respondents must in fact be retained by those corporations or organizations.

4. Representing, directly or indirectly, that any person, firm, organization, governmental agency or official has endorsed, used, or has used and been satisfied with respondents' services, unless such is a fact and such person, firm, organization, governmental agency or official has given prior written consent for such representation.

5. Misrepresenting any material aspect of respondents' services or business practices.

II

It is further ordered, That respondents cease and desist from:

1. Representing, directly or indirectly, that respondents will develop or refine inventions or ideas for new products submitted to them by their customers, unless respondents disclose in conjunction with and adjacent to such representations the following statement:

[4]

"Our role in the development of your idea or invention is limited solely to the preparation of illustrations and drawings."

Such statement shall be made in a clear and conspicuous manner in print at least as large as the print containing the representation; or in broadcast media, the statement shall be read at a rate of speed at least as slow as the slowest part of the advertisement.

2. Representing, directly or indirectly, that respondents introduce, promote or negotiate with manufacturers regarding clients' ideas or inventions, unless respondents disclose in conjunction with and adjacent to such representations the statement set forth in paragraph 5 below.

3. Making, directly or indirectly, any earnings or success claims for respondents' clients generally, or for any specific client, unless respondents disclose in conjunction with and adjacent to such representations the statement set forth in paragraph 5 below.

4. Representing, directly or indirectly, that potential purchasers of respondents' services may or will receive financial gain from an idea or invention, unless respondents disclose in conjunction with and adjacent to such representations the statement set forth in paragraph 5 below.

5. Failing to disclose the following statement as required by paragraphs 2, 3, and 4:

"In (date), we sold our complete service to (total number)

customers. Of these, (*number*) received more money from our services than they paid us.”

Such statement shall be made in a clear and conspicuous manner in print at least as large as the print containing the representation; or in broadcast media, the statement shall be read at a rate of speed at least as slow as the slowest part of the advertisement; and the following definitions shall apply: [5]

(a) “Total number” includes all clients who contracted for respondents’ services during any three of the five calendar years preceding the calendar year in which the representation is made; provided that clients who contracted only for preliminary product research need not be included. All numbers shall be stated in Arabic numerals.

(b) “Date” shall be the three calendar years selected for purposes of (a) above.

III

It is further ordered, That respondents shall include the disclosure statement set forth in Appendix A at least once in pamphlets, brochures, and other promotional literature, excluding media advertisements:

1. This disclosure shall be made in a clear and conspicuous manner,

(a) in print at least as large as the largest print in the promotional literature other than respondents’ name, but in no case smaller than 10 point boldface type;

(b) set off by a black or colored border that contains only the disclosure statement; and

2. For purposes of the disclosure statement depicted in Appendix A, the following definitions shall apply:

(a) “Total number” includes all clients who contracted for respondents’ services during any three of the five calendar years preceding the calendar year in which the promotional literature is distributed; provided that clients who contracted only for preliminary product research need not be included. All numbers shall be stated in Arabic numerals.

(b) “Date” shall be the years selected for purposes of (a) above.

3. If respondents provide fair, competent, and objective evaluations or appraisals, they may omit from the disclosure statement the following language: “We do not evaluate the merits of your idea or tell you whether it can be patented or marketed.” [6]

IV

It is further ordered, That respondents shall:

1. Furnish a retainable duplicate copy of the Appendix A disclosure statement with each research agreement, development and marketing contract or other client service contract. Such disclosure statement shall be set forth either on the contract itself or in a separate document that contains no other information and that is attached to and easily detachable from the contract.

2. Have each prospective purchaser of respondents' services acknowledge in writing on the contract or on the separate disclosure document, as appropriate, the receipt of the disclosure statement in Appendix A.

V

It is further ordered, That respondents shall furnish the notice of cancellation set forth in Appendix B to each purchaser of respondents' services, including purchasers of preliminary product research agreements, development and marketing contracts or other client service contracts; *provided,* that such notices need not be furnished and such rights do not apply when all contact between respondents and a prospective purchaser prior to execution of any such agreement or contract is by mail and/or telephone.

1. The notice of cancellation shall be made in the following manner,

- (a) The notice of cancellation form shall be furnished in duplicate, attached to the contract and easily detachable.

- (b) The notice shall be in at least 10 point boldface type with a heading in 16 point extra-boldface type.

2. Within ten (10) days after receipt of a signed notice of cancellation, respondents shall refund all monies that have been paid to respondents pursuant to the cancelled transaction. [7]

VI

It is further ordered, That respondents shall maintain the following records for a three-year period and make them available for examination and copying by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours:

1. A copy of each advertisement, each radio script, and each television script and film published or disseminated by respondents.

2. Records disclosing the date or dates each advertisement, script or film was published or disseminated.
3. The name and address of each publication or broadcast media disseminating each advertisement, script or film.
4. A copy of each brochure, flyer or other type of promotional literature published or disseminated by respondents.
5. Copies of signed disclosure statements made pursuant to Part IV of this order.
6. Copies of signed notices of cancellation made pursuant to Part V of this order.
7. Copies of all product research agreements, development and marketing contracts, and other client service contracts.

VII

It is further ordered, That respondents shall:

1. Forthwith deliver a copy of this order, incorporating its provisions, to all present and future salespersons or other persons engaged in the sale of respondents' services and secure from each such salesperson or other person a signed statement acknowledging receipt of a copy of this order and their written agreement to adhere thereto. [8]
2. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.
3. Promptly notify the Commission for a period of ten (10) years of the discontinuance of any business, occupation or employment concerned with the introduction, promotion, development, licensing, marketing or sale of ideas or inventions and of the affiliation with any other such business, occupation or employment. Such notice shall include a description of respondents' ownership, duties and responsibilities in any other such business, occupation or employment. The expiration of this paragraph shall not affect any other obligations arising under this order.

VIII

It is further ordered, That each individual respondent and every firm, partnership, association, corporation or other business entity that each individual respondent controls or manages, and which

offers, or purports to offer, any service or program to assist a customer in making money do forthwith cease and desist from:

1. Misrepresenting, directly or indirectly, the nature or value of such service or program;
2. Misrepresenting, directly or indirectly, the earnings potential of a customer who purchases or uses such service or program.
3. Representing, directly or indirectly, that any person, firm, organization, governmental agency or official has endorsed, used, or has used and been satisfied with such service or program, unless such is a fact and such person, firm, organization, governmental agency or official has given prior written consent for such representation.
4. Otherwise misrepresenting any material aspect of respondent's service, program or business practices. [9]

IX

It is further ordered, That nothing herein shall relieve respondents of any obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent with any provision of this order, respondents shall notify the Commission of such inconsistency and request advice as to compliance herewith.

X

It is further ordered, That respondents shall, within sixty (60) days after entry of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Pitofsky did not participate in consideration of this matter.

[10] Appendix A

NOTICE

You should be aware that

we do not evaluate the merits of your idea or tell you whether it can be patented or marketed;
in (date), we sold our complete service to (total no.) customers. Of these, (no.) received more money from our services than they paid us;
in addition to the money you pay us, you may have to pay attorneys' fees, Patent Office fees, and other charges in connection with our program. Ask us for complete price information.

489

Final Order

[11] Appendix B

NOTICE OF CANCELLATION

If you change your mind, you can cancel this contract within 10 business days after you signed it. If you mailed us the contract, you can cancel it within 10 business days after you put the contract in the mail.

There will be no penalty or obligation if you cancel. Within 10 days after we get your notice, we'll return any money you paid us under this contract.

To cancel this contract, sign and date this notice, or send a letter or telegram of your own telling us you want to cancel. Mail it or give it to us by midnight of the tenth business day after the contract was signed, or after you mailed the contract to us.

Send the notice, letter or telegram to:

name of seller
address

I hereby cancel this contract.

signature
date

IN THE MATTER OF
NATIONAL FIRE HOSE CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2935. Complaint, Nov. 1, 1978—Decision, Nov. 1, 1978

This consent order requires a Compton, Calif. manufacturer and seller of fire hose and accessories to cease, in connection with the sale and distribution of their products, from entering into agreements, or taking any other action that would impose territorial or customer restrictions on their distributors.

Appearances

For the Commission: *John Hankins.*

For the respondent: *Earl P. Willens, Buchalter, Nemer, Fields & Savage, Los Angeles, Calif.*

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 the parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent National Fire Hose Corp. is a corporation organized under the laws of the State of California, with its executive office, plant, and principal place of business located at 516 East Oaks St., Compton, California.

PAR. 2. Respondent Raymond L. Pepp is Chairman of the Board of Directors of respondent corporation. Together with the other individual respondent, respondent Raymond L. Pepp has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent, including those hereinafter set forth. Mr. Pepp's office address is the same as that of respondent corporation.

PAR. 3. Respondent Dudley H. Pepp is an officer of respondent corporation. Together with the other individual respondent, respondent Dudley H. Pepp has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent, including those