

IN THE MATTER OF
NORRIS INDUSTRIES, INC.

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

Docket C-2946. Complaint, Dec. 27, 1978 — Decision, Dec. 27, 1978

This consent order, among other things, requires a Long Beach, Calif. manufacturer and distributor of dishwashers and other major home appliances to cease misrepresenting, or making unsubstantiated claims regarding the qualities, performance or efficacy of its products.

Appearances

For the Commission: *Robert Barton and Laurence Kahn.*

For the respondent: *R. James Shaffer, Long Beach, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Norris Industries, Inc., [hereinafter referred to as respondent], has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Norris Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its executive office and principal place of business located at One Golden Shore, Long Beach, California.

PAR. 2. Respondent now, and for some time last past has been, engaged in the distribution, sale and advertising of portable and undercounter dishwashers and other consumer products to the public.

PAR. 3. Respondent causes the said products to be transported from its places of business in various States of the United States to various dealers and distributors for sale to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent at all times mentioned herein has been, and now is, in substantial competition in commerce with individuals,

firms and corporations engaged in the sale and distribution of dishwashers and other consumer products.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the sale of dishwashers and other consumer products of respondent, respondent has disseminated and caused the dissemination of advertising in national magazines distributed by mail and across state lines, and by radio and television broadcasts transmitted by radio and television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines. In addition, respondent has disseminated to dealers across state lines, product brochures and other sales literature which are available for distribution to consumers by dealers prior to and at the time of sale of the dishwashers.

PAR. 6. As used in this complaint and order, the term "advertisement" means any written or verbal statement, illustration or depiction designed to effect the sale of dishwashers or to create interest in purchasing such products, whether appearing in a radio or television broadcast; product brochure; catalog; leaflet, mailer or circular; point of purchase display; newspaper; trade publication; or magazine. The term "dishes" means plates, glasses, cups, silverware, bowls, and other items normally used in serving and in eating. The term "cookware" means pots, pans, roasters, and other items normally used in baking or cooking. The term "utensils" means "dishes," "cookware," and any other items normally and customarily placed in a dishwasher.

PAR. 7. Among the advertisements so disseminated or caused to be disseminated by respondent are those attached as Exhibits A-J of the complaint.

PAR. 8. Said Exhibits A-J and other advertisements represent, directly or by implication, that Waste King dishwashers can completely clean baked-on, cooked-on, and other food soils from roasters, pots and pans, and other cookware placed in the dishwashers.

PAR. 9. At the time respondent made the representations alleged in Paragraph Eight of the complaint, it did not possess and rely on a reasonable basis for such representations. Therefore, said advertisements are deceptive or unfair.

PAR. 10. In truth and in fact, contrary to respondent's representations in Paragraph Eight of the complaint, Waste King dishwashers will not completely clean baked-on, cooked-on, and other food soils from roasters, pots and pans, and other cookware placed in the dishwashers. Therefore, said advertisements are deceptive or unfair.

PAR. 11. Said Exhibits A-J and other advertisements represent, directly or by implication, that Waste King dishwashers can completely clean dishes, cookware, and other utensils placed in the dishwasher without prior hand-scraping, hand-scouring, or hand-rinsing.

PAR. 12. At the time respondent made the representations alleged in Paragraph Eleven of the complaint, it did not possess and rely on a reasonable basis for such representations. Therefore, said advertisements are deceptive or unfair.

PAR. 13. In truth and in fact, contrary to respondent's representations in Paragraph Eleven of the complaint, Waste King dishwashers will not completely clean dishes, cookware, and other utensils placed in the dishwasher without prior hand-scraping, hand-scouring, or hand-rinsing. Therefore, said advertisements are deceptive or unfair.

PAR. 14. Said Exhibits A-J and other advertisements represent, directly or by implication, that no hand-scraping, hand-scouring, or hand-rinsing of soft food waste on dishes, cookware or other utensils is necessary before placing the utensils in a Waste King dishwasher because the dispo-drain will remove all such soft food waste from the dishwasher.

PAR. 15. At the time respondent made the representations alleged in Paragraph Fourteen, it did not possess and rely on a reasonable basis for such representations. Therefore, said advertisements are unfair and deceptive.

PAR. 16. In truth and in fact, contrary to respondent's representations in Paragraph Fourteen, the dispo-drain on the Waste King dishwashers will not remove all soft food waste from the dishwashers. Therefore, said advertisements are unfair or deceptive.

PAR. 17. Contrary to the representations alleged in Paragraph Fourteen, the owners manuals for the Waste King dishwashers, which are customarily provided to consumers only after they purchase the dishwashers, instruct the user to scrape all food waste from dishes, pots, pans and silverware, and to pre-rinse starchy foods such as cereal or potatoes.

PAR. 18. (a) The instructions in the owners manuals are material facts in view of the representations made in the advertising as set forth in Paragraph Fourteen of the complaint. Said advertisements fail to reveal these material facts and are therefore deceptive or unfair. (b) Said advertisements are also materially inconsistent with the instructions in the owners manuals. Therefore, the said advertisements are deceptive or unfair.

PAR. 19. Said Exhibit A-J and other advertisements, by stating that the "Sani-heat" cycle has a 165° final rinse which sterilizes

thoroughly, represents, directly or by implication, that this cycle destroys all harmful and other bacteria and microorganisms.

PAR. 20. At the time respondents made the representations alleged in Paragraph Nineteen, they did not possess and rely on a reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 21. In truth and in fact, contrary to respondents' representations in Paragraph Nineteen, the "Sani-heat" cycle does not destroy all harmful and other bacteria and microorganisms on dishes, pots and pans. Therefore, the said advertisements are deceptive or unfair.

PAR. 22. Said Exhibit H and other advertisements represent, directly or by implication, that the "Cookware Cycle" is specifically designed to wash cookware, such as pots, pans and roasters, completely clean of baked-on, cooked-on, greasy, and other types of food soil.

PAR. 23. At the time respondent made the representations alleged in Paragraph Twenty-Two of the complaint, it did not possess and rely on a reasonable basis for such representations. Therefore, said advertisements are deceptive or unfair.

PAR. 24. In truth and in fact, contrary to respondent's representations in Paragraph Twenty-Two, the Cookware Cycle was not specifically designed to wash cookware, such as pots, pans and roasters, completely clean of baked-on, cooked-on, greasy, and other types of food soil. Therefore, said advertisements are deceptive or unfair.

PAR. 25. Said Exhibits A-J and other advertisements represent, directly or by implication, that all the stainless steel parts in the Waste King dishwasher are rustproof.

PAR. 26. At the time respondent made the representations in Paragraph Twenty-Five of the complaint, it did not possess and rely on a reasonable basis for such representations. Therefore, said advertisements are deceptive or unfair.

PAR. 27. In truth and in fact, contrary to respondent's representations in Paragraph Twenty-Five, all the stainless steel parts are not rustproof. Therefore, said advertisements are deceptive or unfair.

PAR. 28. Said Exhibit F and other advertisements represent, directly or by implication, that dishes placed in the upper rack of Waste King dishwashers will get as clean as those placed in the bottom rack.

PAR. 29. At the time respondent made the representations alleged in Paragraph Twenty-Eight of the complaint, it did not possess and rely on a reasonable basis for such representations. Therefore, said representations are deceptive or unfair.

PAR. 30. Exhibits C-E and other advertisements represent, directly or by implication, that the baskets in the Waste King dishwashers can be randomly loaded and that there are no special instructions to follow when loading the dishwashers.

PAR. 31. At the time respondent made the representation alleged in Paragraph Thirty, it did not possess and rely on a reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 32. In truth and in fact, contrary to respondent's representations in Paragraph Thirty, the baskets in the Waste King dishwasher cannot be randomly loaded and there are special instructions to follow when loading. Therefore, said advertisements are deceptive or unfair.

PAR. 33. Contrary to the representations alleged in Paragraph Thirty, the owners manuals for the Waste King dishwashers, which are customarily provided to consumers only after they purchase the dishwasher, do contain special instructions for the user to follow when loading the dishwashers.

PAR. 34. (a) The instructions in the owners manuals are material facts in view of the representations made in the advertising set forth in Paragraph Thirty of the complaint. Said advertisements fail to reveal these material facts and are therefore deceptive or unfair. (b) Said advertisements are also materially inconsistent with the instructions in the owners manuals and are therefore deceptive or unfair.

PAR. 35. Said Exhibits A and G, and other advertisements, represent, directly or by implication, that all Waste King dishwashers are quiet in operation or quieter in operation than competing makes of dishwashers.

PAR. 36. At the time respondent made the representations alleged in Paragraph Thirty-Five of the complaint, it did not possess and rely on a reasonable basis for such representations.

PAR. 37. Exhibits A, C, D, E, and G, and other advertisements, represent, directly or by implication, that the features described in the advertisements apply to all Waste King dishwashers.

PAR. 38. In truth and in fact, contrary to respondent's representations in Paragraph Thirty-Seven, certain features described in the advertisements, such as the insulation, random loading, and the ability of the dishwasher to wash dishes on top as clean as those dishes on the bottom rack, do not apply to all the Waste King dishwasher models. Because the advertisements fail to disclose these material facts, said advertisements are deceptive or unfair.

PAR. 39. Said Exhibits A-J and other advertisements represent,

directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations as alleged in Paragraphs Eight, Eleven, Fourteen, Nineteen, Twenty-Two, Twenty-Five, Twenty-Eight, Thirty, and Thirty-Two, whereas in truth and in fact respondent had no reasonable basis for such representations. Therefore, said advertisements are deceptive or unfair.

PAR. 40. The use by respondent of the aforesaid false, misleading, deceptive or unfair statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of dishwashers sold by respondent by reason of said erroneous and mistaken belief.

PAR. 41. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

EXHIBIT A

WASTE KING BUILDS A DISHWASHER LIKE WASTE KING

The best of everything. That's what you get with Waste King. A modern masterpiece in stainless steel, for those who want a better product, advanced features, long-lasting service.

Stainless steel is superior

It's tough, Rustproof, Sanitary. Unlike the porcelain or plastic coatings used by many manufacturers, stainless steel can't wear off, chip, peel or crack. That's why we use it where the action takes place. For the tank and inner door of the dishwasher, the wash arms that do the scrubbing and rinsing, the basket guide rails.

That's why we can guarantee all stainless steel parts for 20 years against failure due to corrosion.



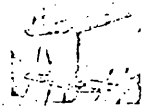
Load it the easy, random way

There are no special instructions to follow when loading a Waste King dishwasher. Both baskets put out all the way for easy accessibility. Both take a mixed load of dishes and utensils. Bowls can go on top of other dishes. Removable dividers in the upper basket provide space for oversized serving dishes, utensils.



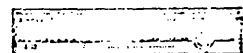
Three-way washing action

Fast-moving jets of hot, detergent-activated water from two counter-rotating wash arms reach every corner of the steel tank. This two-level, full-width cleaning system not only cleans completely, it permits random loading of each basket. The lower arm sends water up through the lower basket. The upper arm jets water up through the upper basket, as well as down through the dishes below it. (SS777 has single arm only)



Superscrub and Sani-heat

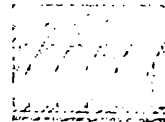
The Superscrub cycle extends wash time to get tough jobs like roasters really clean. Sani-heat, a 165-degree final rinse sterilizes thoroughly. A silent heater provides humidity-free drying.



Control Panel for SS911.

Waste King pampers the load

Waste King's big baskets provide space for almost every size and shape. The huge capacity tank can truly hold and wash a day's dishes for a family of five. There's no need to worry about breakage. Plates are spaced by cushioned loops to prevent chipping; M-shaped supports make secure cradles for the most fragile stemware. Flatware baskets have lidded sections to hold small items.



Insulation cuts down noise

Waste King dishwashers are ultra-quiet in operation. Thanks to Hush-coat, a dense acoustical material that cushions sound at the source. In addition to hush-coating, the top, sides, back and door are wrapped with a thick blanket of foam.

Disposo-drain ends pre-rinsing

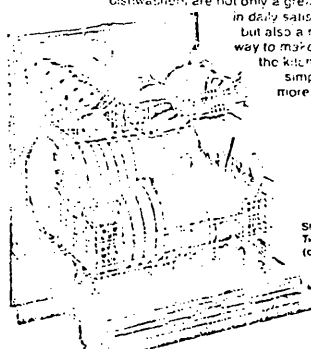
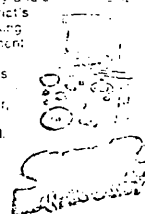
No scraping. No pre-rinsing. Just flick off bones and large food pieces. Waste King's efficient Disposo-drain will flush away soft waste such as corn, spaghetti, potatoes, spinach. There's no screen to clog or to trap tiny food particles.

The Rinse-and-Hold cycle is a quick rinse to remove surface soil from dishes to be held for a full washing cycle later on.

We build it. We back it with a super-warranty

For more than 30 years, we have been building dishwashers to rigid standards of performance, quality and craftsmanship. We back them with a super-warranty that's the strongest in the industry. Waste King dishwashers are not only a great investment

in daily satisfaction, but also a marvelous way to make life in the kitchen easier, simpler and more beautiful.



Shown: Model SS911. Two portable models (convertible) also available.

Waste King
Stainless Steel Dishwashers



For further information and complete warranty details, call your dealer, or write Waste King, Dept. D, 5115 District Blvd., Los Angeles, Ca. 90040

Complaint

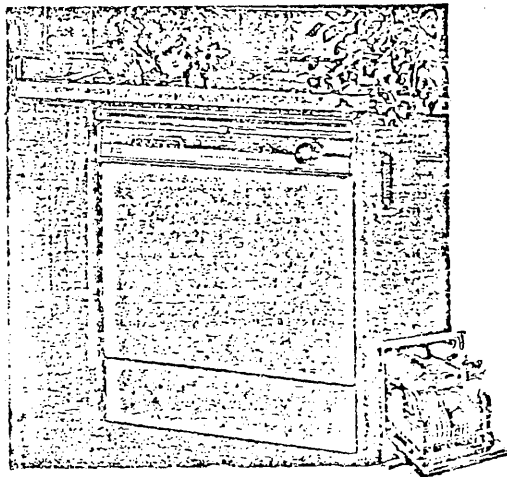
92 F.T.C.

EXHIBIT B

53

**Waste King: super-sturdy
stainless steel dishwasher
with the strongest warranty
in the industry.**

A huge capacity dishwasher with full
width wash cycle, one under each
bowl; for 3-way double wash and
triple rinse action. Pots and pans
go in either basket; the Diachro-
drain eliminates need for hand-
drying dishes. The silent motor
propels pumping and blowing for fast
drying. Waste King dishwashers
have stainless steel bowls that don't
chip, peel, crack or rust. Inner
door, wash arm and guide rails
are also stainless steel. MODEL 811



**Efficiency experts.
Waste King appliances do the job
quieter, easier, speedier.**



Waste King Disposers
Tiger, rugged,
panther, cat,
a pussy cat
to install

Grinds up bones, ribs, cods,
steak, stuff. No need to sort
garbage. Waste King's patented
anti-jam principle prevents
 jams before they can happen.



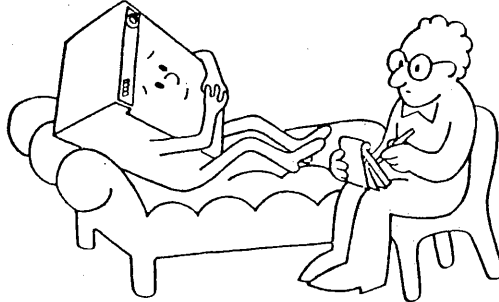
For complete warranty details on all Waste King products,
see your dealer or write Waste King.



8131 Duane Ave., Los Angeles, Calif. 90048
Kalamazoo Office: 815 S. Western, Port Huron, Mich. 48134 • New York Office: 100 W. 40th St., New York, N.Y. 10018

EXHIBIT C

WASTE KING. THE DISHWASHER THAT'S SICK OF BEING CONFUSED WITH OTHER BRANDS.



Doc, I'm a good dishwasher. I work hard. I clean. I scrub...

Yes.

But people keep confusing me with other brands.

A classic case of identity crisis.

What hurts is that it's me—Waste King—who's got the double wash arm that gets things really clean, no matter where you stack 'em.

I see.

You can load both my baskets, any way you want and even grimy pots and pans come out sparkling clean.

You've got a thing about cleanliness?

Yes, I'm obsessed with it!

Very revealing.

Look, Doc, don't get me wrong. I'm no sissy. I'm tough. In fact, it's me, Waste King, who has the stainless steel interior and the strongest warranty there is.

You have great inner strength.

Yeah, but like most tough guys, I've got my gentle side.

A split personality.

Yes and no. But getting back to my gentle side, I've got these cushioned loops on my baskets that protect dishes and glassware from chipping.

I notice you have removable baskets and adjustable racks.

Yeah, I'm very flexible. You can adjust 'em to hold just about anything you want.

Look, you've got double wash arm, stainless steel interior, flexible baskets,

cushioned loops... so what's the problem?

People don't know who I am! So please, Doc, tell me, what should I do?

Well, Mr. King Waste, maybe you should advertise.

The name's Waste King! Waste King! Waste King!



Waste King

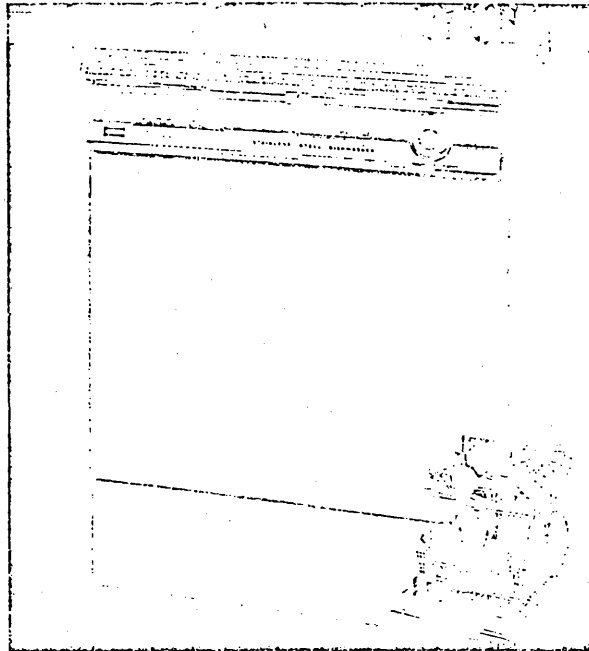
THE STAINLESS STEEL DISHWASHERS

For complete warranty details on all Waste King products see your Dealer or write Waste King, Dept. A, 3115 Belmont Blvd., Longwood, FL 32740. Eastern Area Office: 615 Shumard Parkway, Suite 8A, Memphis, TN 38119. (901) 232-3432.



more built-in sales features

Grinds up the tough stuff; bones, pits, cobs, rings and stalks. No need to sort garbage. Patented no-jam swivel impellers.
MODEL SS8000



Waste King has 2 full width wash arms - one under each basket for 3-way action: provides double wash, triple rinse for really clean dishes. Rugged baskets with cutlutes to separate & rinse and prevent cracking and breaking. Large capacity with random loading is simple enough for a child. Waste King dishwashers have stainless steel tanks that don't chip, dent, crack or rust. Inner doors, wash arms and guide rails are also stainless steel. MODEL 9911



For complete warranty details on all Thermacore products, see your Dealer or write Thermacore.



For complete warranty details on all Waste King products, see your Dealer or write Waste King.

Norris Industries Booth 2438 at the NARIIB Convention.

Flower + Flower

✓ **UNIT 13 ON A SERVICE CARD**

3-4-20, 35

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ISSN 1468-2642 (print)

KITCHEN BUSINGS - DEPT. R

EXHIBIT F

5.7

The power of stainless steel. Waste King's self-selling dishwashers.

The strongest warranty in the industry, and an interior full of features make Waste King stand out as a royal sales performer.

Stainless steel gives you more sales clout: it's tough, durable and withstands the rigors of hard use. Waste King's stainless steel tank, inner door, wash arms and guide rails won't chip, peel, crack or rust. A full-width wash arm under each basket provides three-way, double-wash and triple-rinse action. Dishes on top get as clean as those on the bottom.

The long-playing Superscrub cycle extends wash time for tough jobs like casseroles, pots, pans, crusty roasters. These utensils go in the same load with china and crystal. Waste King's huge tank can truly hold and wash a day's dishes for a family of five.

Sani-heat is a 165 degree final rinse that sterilizes and rinses thoroughly. A silent heater provides humidity-free drying for a cool kitchen and spot-free dishes.

Get our new profit-making promotional plans to help you sell faster and easier. See your distributor now.



Adjustable baskets extend fully; upper one has removable dividers. Plate-cushions separate dishes and prevent chipping. Sani-heat cradles and wash arms permit random loading.

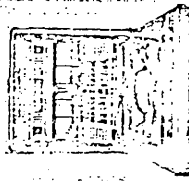
Waste King
The Stainless Steel Dishwashers



DISHWASHERS
DISPOSERS
COMPACTORS
CHAR-GLO
GAS FIRED BARBECUES

For further information and complete warranty details see your distributor or write Waste King, 6119 Linderoth Blvd., Dept. R, Los Angeles, Ca 90040

Our dishwashers are designed to serve you better.

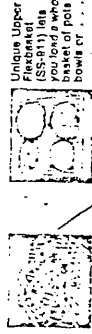


White King Stainless Steel Tanks — Durable and Trouble Free

A common cause of tank failure is pinpoints to the protective surface. Once the coating goes, rust and corrosion set in.

Our tanks are stainless steel through and through, no cracking, no peeling, no rust. Commercial dishwashers are made of stainless steel.

Exclusive Raster Design makes loading easy. No awkward twisting. And because our two level wash system lets you load and park your dishes in either level — you can take advantage of every inch of space.



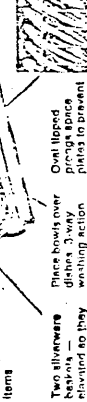
Unique Upper Raster (SS-811) lets you load and park bowls or plates in either level.



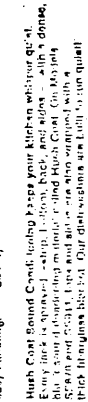
Shift racks around for a mixed load.



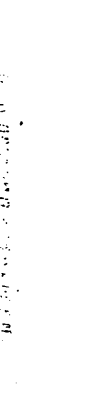
Place bowls over plates to prevent chipping.



Two all-purpose racks. Removable for easy handling.



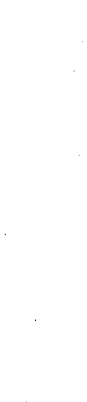
Push Coat Guard. Keeps your kitchen whisker clean.



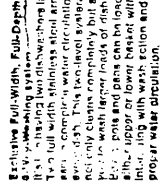
Every time you wash your dishes, you'll find them clean and sparkling.



SS-811 and SS-812. Two all-purpose racks. Removable for easy handling.



Push Coat Guard. Keeps your kitchen whisker clean.



Exclusive Full-Width, Full-Depth 2-V. Washing System.

It's a washing system in one. It's a complete stainless steel arm and spray arm system. It's a two-level system. It's a two-level system. It's a two-level system.

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Complaint

92 F.T.C.

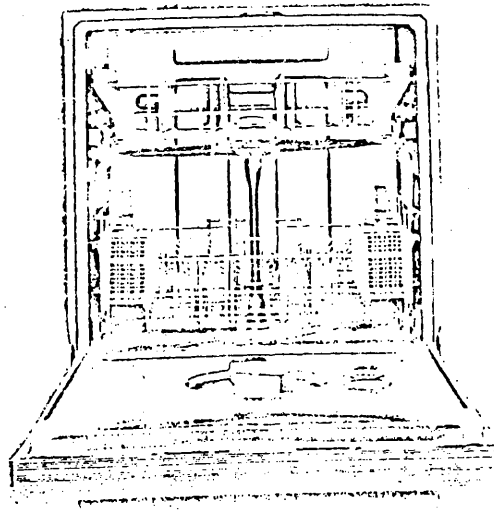
Exhibit H

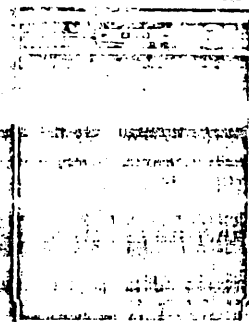
SS 673

(18.1)

Waste King Universal

The stainless steel dishwasher





5 year
 The motor, pump, timer, entire water distribution system heater and pushcutions carry a 5 year parts warranty.
 If these parts fail to operate properly due to a defect in materials or workmanship at any time within 5 years, we'll fix the part or supply a new one.
 As another example, we guarantee against defects in our waste line. Universal will absorb the cost of any service or necessary to replace any defective part for the first year of service.

The Strongest Guarantee

5 years

The motor, pump, timer, entire water distribution system heater and pushcutions carry a 5 year parts warranty.

If these parts fail to operate properly due to a defect in materials or workmanship at any time within 5 years, we'll fix the part or supply a new one.

As another example, we guarantee against defects in our waste line. Universal will absorb the cost of any service or necessary to replace any defective part for the first year of service.

20 years

Every Saniflo waste line is guaranteed for 20 years against defects in materials or workmanship.

If the waste line fails to operate properly due to a defect in materials or workmanship at any time within 20 years, we'll fix the part or supply a new one.

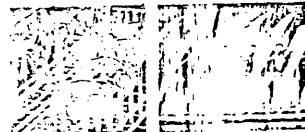
Complaint

92 F.T.C.

**Inclusive basket design
makes loading easy**

It's easy loading provides places and cues for almost everything. "M"-shaped supports prevent damage to fragile stemware. China-separating ridges prevent chipping. Lidded compartments for small items in verware baskets.

The upper basket rolls out completely, reach the back without reaching into the washing chamber.



shaped racks
for fragile
ware

Knuckled curliques
space plates to
prevent chipping

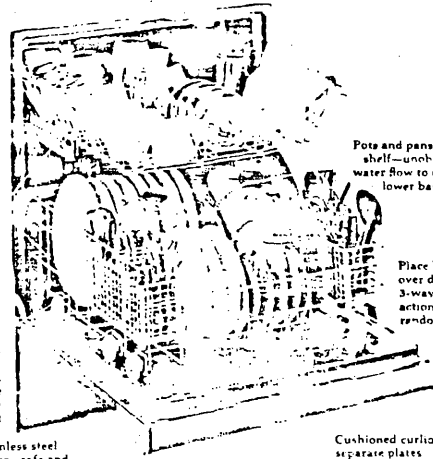
M-shapes cradle
stemware

Fully extendable
baskets

Lidded
compartments
for small items

Elevated,
removable
silverware
basket

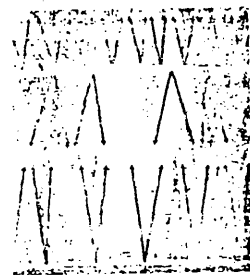
Stainless steel
interior—safe and
durable



Pots and pans on either
shelf—unobstructed
water flow to upper and
lower baskets

Place bowls
over dishes—
3-way washing
action permits
random loading

Cushioned curliques
separate plates
and prevent chipping

**Inclusive "Full Width,
Full Depth" 3-way washing
system for a cleaner wash**

The exclusive double wash arm system, like having two dishwashers in one, so full-width stainless steel arms assure complete water circulation in every nook and cranny.

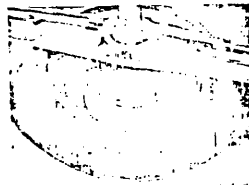
Counter-rotating distributor arms with jets jetting up and down, from ports that act like stainless steel nozzles, thoroughly scrub all surfaces. The upper arm washes the dishes in the upper and lower baskets. The lower arm washes the dishes in the lower basket, allowing total random loading of both baskets.

**Stainless steel protects you
from costly repairs**

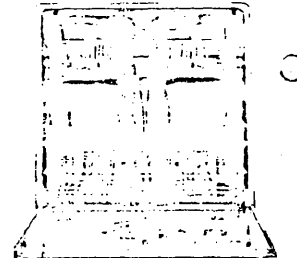
Porcelain or plastisol coatings frequently chalk off, chip, crack or peel. A scratch or a chip from a dropped utensil can rust all the way through in a surprisingly short time. Stainless Steel cannot chip, crack or peel, protecting you from costly repairs.

Forget tedious hand rinsing

Our Dispo-Drain eliminates tedious hand rinsing. Just scrape off the bulky stuff. Remaining wastes are automatically flushed away. There's no screen to trap tiny food particles.

**Hush-Coat—whisper quiet**

Hush-Coat is a dense, black, acoustical material that deadens sound. Its thick acoustical mass muffles the sound of the washing action. It dampens vibration. We Hush-Coat all 5 sides of the dishwasher tank.

**Sanitary, humidity free
drying for a cool kitchen**

Patented ThermoMatic heater creates currents of clean, dry, heated air that rise slowly, blot up moisture, absorb it, and carry it off to the cooler stainless steel sides and door. Moisture condenses, drains into the pump basin.

This continuous heat transfer system dries without the need for motorized blowers that suck in outside air. Dries with the clean heated air within the dishwasher. Safe, Sanitary, Silent.

Other features: Tamper proof cycle indicator. Automatic rust agent dispenser. Safety door latches. Infinitely adjustable springs for proper door balance, even with custom panels.

Complaint

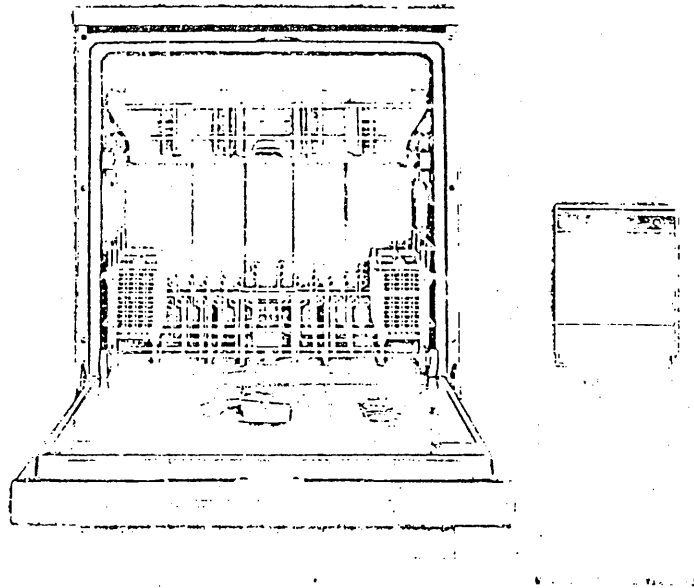
92 F.T.C.

Exhibit I

92
1/8.312

Waste King Universal

The stainless steel dishwasher



For the first time, 550,000 people are guaranteed for 20 years against illness. Due to corruption in the health system, the door to water, electricity and the police was closed. The situation was so bad that it was necessary to bring in foreign aid. Due to corruption, the situation was so bad that it was necessary to bring in foreign aid.

* The contents of the letter and the
the contents of the letter, and the
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Complaint

92 F.T.C.

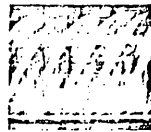
Five basket design loading easy

1. Supports prevent damage to stemware. China-separating dividers prevent chipping. Lidded compartments for small items in upper baskets.

2. Upper basket folds out completely. Reach back without reaching into washing chamber.



Dish racks
style
t



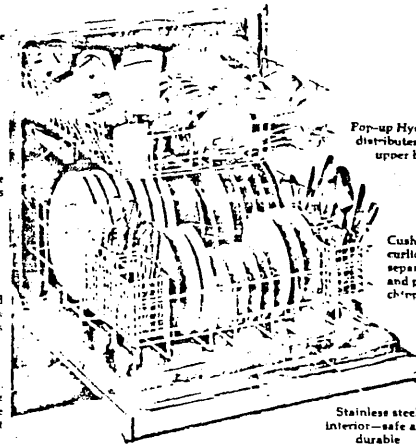
Knuckled curlicues
space plate to
prevent chipping

M-shape cradle
stemware

Fully extendable
baskets

Lidded
compartments
for small items

Elevated,
removable
silverware
basket

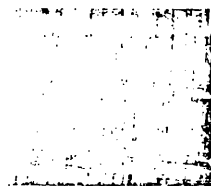


Pop-up Hydro Tower
distributes water to
upper basket

Cushioned
curlicues
separate plates
and prevent
chipping

Stainless steel
interior—safe and
durable

Pop-Hydro-Tower reaches corner-to-corner washing action



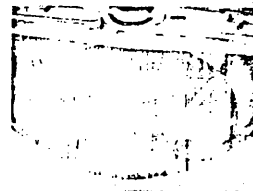
Pop-Hydro-Tower pops up from the distributor arm to wash dishes in upper basket. Water swirls and sprays through scientifically located nozzles in the lower arm and pop-up. Streams of hot water cover dishes other dishwashers miss, and stubborn food wastes from crevices of every dish.

Stainless steel protects you from costly repairs

Plastic or plastisol coatings frequently chip, crack or peel. A scratch from a dropped utensil can rust away through in a surprisingly short time. Stainless Steel cannot chip, crack or peel, protecting you from costly repairs.

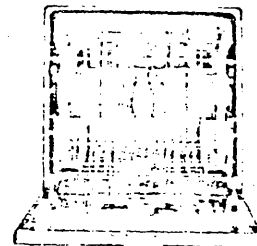
Forget tedious hand rinsing forever!

Our Disposo-Drain eliminates tedious hand rinsing. Just scrape off the bulky stuff. Remaining wastes are automatically flushed away. There's no screen to trap tiny food particles.



Hush-Coat—whisper quiet

Hush-Coat is a dense, black, acoustical material that deadens sound. Its thick acoustical mass muffles the sound of the washing action. It dampens vibration. We Hush-Coat all 5 sides of the dishwasher tank.



Sanitary, humidity free drying for a cool kitchen

Talented ThermoMatic heater creates currents of clean, dry, heated air that rise slowly, blot up moisture, absorb it and carry it off to the cooler stainless steel sides and door. Moisture condenses, drains into the pump basin.

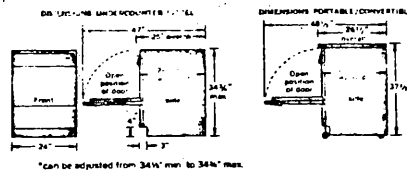
This continuous heat transfer system dries without the need for motorized blowers that suck in outside air. Dries with the clean heated air within the dishwasher. Safe. Sanitary. Silent.

Other features: Tamper proof cycle indicator. Automatic rinse agent dispenser. Safety door latches. Infinitely adjustable springs for proper door balance, even with custom panels.

Complaint

Installation and service

The Hobas Inverted Dishwasher is easily secured to the underside of the counter. No need to bolt it to the floor. Hobas undercounter tabs affixed to the dishwasher hold it in position. Leveling legs permit height adjustment from 34 1/2" min. to 34 3/4" max.



*Can be adjusted from 34 1/2" min. to 34 3/4" max.

Specifications:

Model 55/777

Elect. (120V, 60 cyc.)	Motor Load (Amps)	7
	Total Other Load (Amps)	6
	Maximum Load (Amps)	7
Heater Element	Dry Rating	700
Motor	RPM	3450
	Frequency Phase (single)	60 cycle
	Horsepower	1/2
Water	Total Consumption	15
	Pressure Requirements*	20-120 lbs.
Approx. Shipping Weight**		102
Approx. Net Weight**		87

*Dynamic Pressure with water running at the sink adjacent to dishwasher.
 **Add 62 lbs. for Portable/Convertible Models

Cycle sequence charts

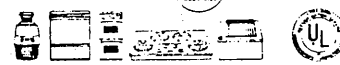
Cycle Length

Cycle	Sequence								Cycle Length (Minutes)
Full Cycle	Pre-Wash	Rinse	Wash	Rinse	Rinse	Sparkle Rinse	Dry		60
Rinse and Hold	Rinse								8*

*Plus time required for timer to advance to START. Total 60 minutes.



Los Angeles, California 90058
 Kitchen Appliances Women's Trust



Leading manufacturer of Disposers • Stainless Steel Dishwashers
 Built-in Gas & Electric Ovens • Electric Self-Cleaning Ovens
 Char-Glitz Gas Barbecue Broilers

We've produced and sold over 5,000,000 food waste disposers.
 Over 900 factory branch stores are open across the country.

Having been in business since 1947, we have a reputation for quality and service. We are proud to be a part of the American way of life.

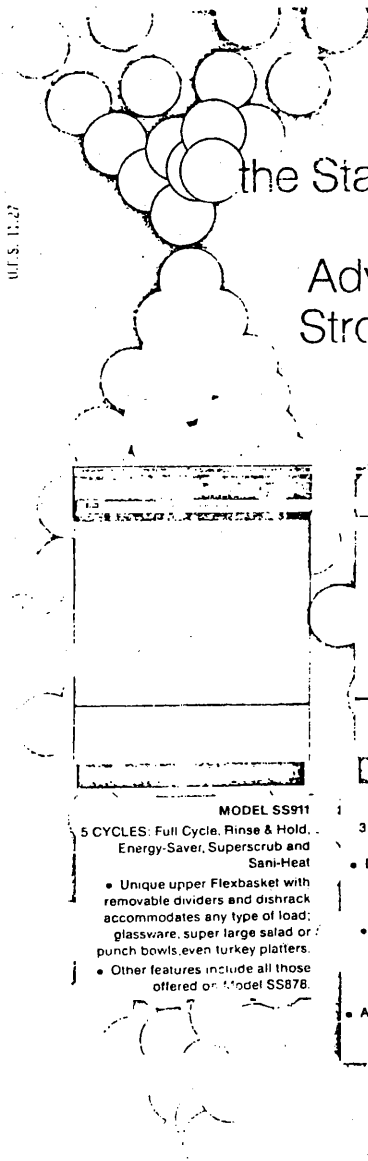
Complaint

92 F.T.C.

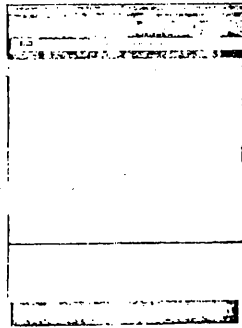
Exhibit J

(18.6)

U.S. 11.27

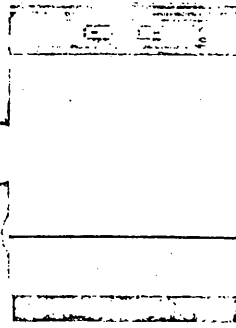


the Stainless Steel Dishwashers
Offer You More...
Advanced Features Plus the
Strongest Warranty Available



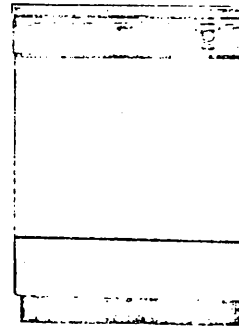
MODEL SS911

- 5 CYCLES: Full Cycle, Rinse & Hold, Energy-Saver, Superscrub and Sani-Heat
- Unique upper Flexbasket with removable dividers and dishrack accommodates any type of load; glassware, super large salad or punch bowls, even turkey platters.
 - Other features include all those offered on Model SS878.



MODEL SS878

- 3 CYCLES: Full Cycle, Rinse & Hold and Energy-Saver
- Dual washing arms permit random loading — put pots, pans and casseroles in either basket and water circulation still works perfectly.
 - Quiet Operation — Entire tank — top, sides, back and bottom are sprayed with Hush-Coat, top and sides are wrapped with a thick fiberglass blanket.
 - Automatic Sparkle Rinse Dispenser for sparkling glassware and spotless china.



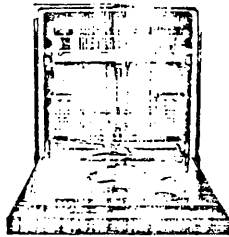
MODEL SS777

- 2 CYCLES: Full Cycle and Rinse & Hold
- Full width lower wash arm, plus Pop-Up Hydro Tower for clean dishes.
 - Family-size capacity with easy, efficient loading.
 - Automatic Sparkle Rinse Dispenser may be added as an optional accessory.
 - Quiet Operation — Entire tank — top, sides, back and bottom are sprayed with Hush-Coat.

Complaint

STRONGEST WARRANTY AVAILABLE

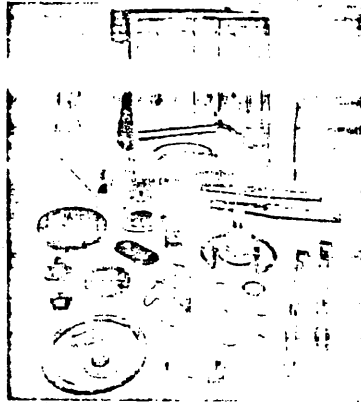
Waste King dishwashers have a noise reduction system that keeps operating noises to a minimum. Hush-Coat is a dense, black acoustical sound-deadening material. Its thick mass muffles the sound of the washing action. Hush-Coat is sprayed on the entire tank — top, sides, back and bottom. On Models SS911 and 878 the top and sides are also wrapped with a thick fiberglass blanket. Waste King dishwashers are built to run quietly!



Porcelain and plastisol used by some manufacturers are protective coatings that frequently chalk off, chip, crack or peel. A scratch or a chip from a dropped utensil can rust all the way through in a surprisingly short time. Stainless Steel cannot chip, crack or peel; it is always clean, shiny and bright. Waste King's warranty assures you: Waste King dishwasher tanks are the most durable ever built.

After the final rinse, Waste King's efficient heater safely dries the clean, washed dishes. Currents of dry, heated air rise slowly, blot up moisture, absorb it and carry it off to the cooler stainless sides and door where the moisture condenses and drains into the pump basin.

This continuous heat transfer drying system eliminates the need for a motorized blower sucking in outside air. The Waste King humidity free system dries with clean, heated air within the dishwasher itself. It is safe, sanitary and silent.



HIGHLIGHTS OF WASTE KING WARRANTY

FULL ONE YEAR WARRANTY against manufacturing defects. All parts and service labor are included.

PLUS EXTENDED LIMITED WARRANTY The following parts are warranted against manufacturing defects for **FOUR YEARS** following the expiration of the full warranty: motor, pump, timer, heater, water distribu-

tion system, and pushbutton switch. Service labor will be the owner's responsibility. All Stainless Steel parts are warranted against failure due to corrosion for **NINETEEN YEARS** following the expiration of the full warranty. Service labor will be the owner's responsibility.

Contact your dealer for details or write to Waste King.

The exclusive double arm washing system (Models SS911 and 878) is like having two dishwashers in one. Two full-width stainless steel arms assure complete water circulation throughout the tank. There's one arm under each basket. Detergent activated hot water is forced through each arm by a powerful pump.

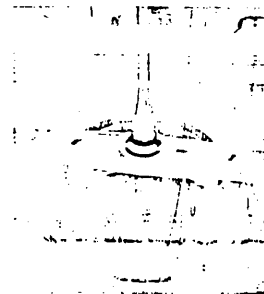
Counter-rotating distributor arms have ports that act like nozzles, jetting water up and down to scrub all surfaces thoroughly.

This two level "Full Width, Full Depth" system not only cleans completely, but it also provides total random loading of both baskets. Bowls or pots and pans may be loaded in lower basket without effecting the washing action.



In the Model SS777's Pump-Up Hydraulic Tower, the telescoping tower is activated. It is possible to provide 2 fan-shaped jets of water for upper basket.

Waste King's Disposo-Drain eliminates tedious hand rinsing. Just scrape off the bulky stuff. Remaining wastes are automatically flushed away. There is no screen to clean or to trap tiny food particles.



Complaint

92 F.T.C.

Exclusive basket design makes loading easy.

Random loading provides places and spaces for almost everything. Big, sturdy baskets provide enormous capacity. There are some differences between models, but there's a lot in common too. "M" shaped supports prevent damage to fragile stemware... china-separating curlicues to prevent chipping... lidded compartments for small items in silverware baskets. (All models).

The upper basket rolls out completely. You can reach the back without reaching into the washing chamber. Removable dividers in the SS911 upper basket provide a shelf for elaborate oversize platters, roasters and serving dishes most people use for holiday entertaining.



M-shaped racks cradle fragile stemware



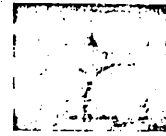
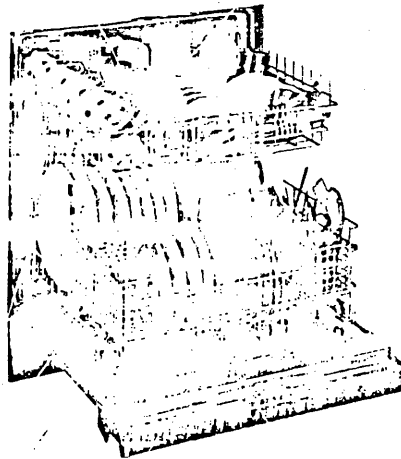
Removable rack leaves 2-tiers of cups

Fully extendable upper and lower baskets

Lidded silverware compartments for small items

Silverware basket — elevated so forks won't snag, removable for extra capacity

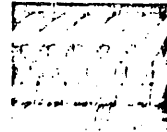
Stainless steel interior — safe and durable



Random loading of pots and pans on a shelf — 3-way washing action assures unobstructed water flow to upper and lower baskets (SS911 SS878) Remove all racks for a pot and pan shelf



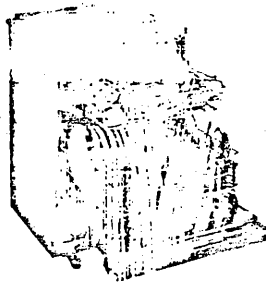
Shift racks around for mixed loads — Place bowls over dishes — 3-way washing action permits random loading (SS911 SS878)



Knuckled curlicues cradle plates to prevent chipping

Stainless Steel Convertible Portable Models Also Available

UTS-11/27



Models SS911 and SS978 are also available in Convertible Portable units. Top is handsome solid maple. Panels come in White, Copper-tone, Avocado and Plastic Gold. Easy hook-up. Designed as a convenient portable now and for possible installation later.



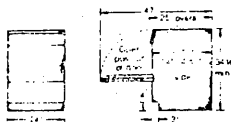
(A) Fill and drain hoses connect to your sink simply and easily. A unique "hula skirt" attachment prevents water from splashing as it drains into sink.



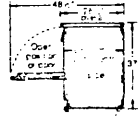
(B) Handsome hinged top covers the hose/cord compartment when the dishwasher is not in use.

For Planning Guide only. For complete installation instructions write and indicate model number.

DIMENSIONS UNDERCOUNTER MODEL



DIMENSIONS PORTABLE CONVERTIBLE



TYPICAL DISHWASHER OPENING DIMENSIONS



Cycle sequence charts:

Cycle Name	Mode	Sequence	Cycle Length (min)
Full Cycle	Full	Pre Wash → Wash → Rinse → Sanitize → Dry	60
Energy Saver	Energy Saver	Pre Wash → Wash → Rinse → Sanitize → Dry	35
Super Scrub	Super Scrub	Pre Wash → Wash → Rinse → Sanitize → Dry	45
Sani-Heat	Sani-Heat	Pre Wash → Wash → Rinse → Sanitize → Dry	60

NOTE: For complete installation instructions, write and indicate model number.

Specifications:

	Model SS911	Model SS978	Model SS991
Capacity (place settings)	12	12	12
Energy Saver	Yes	Yes	Yes
Super Scrub	Yes	Yes	Yes
Sani-Heat	Yes	Yes	Yes
Wash Temp (°F)	120	120	120
Rinse Temp (°F)	120	120	120
Sanitize Temp (°F)	120	120	120
Dry Temp (°F)	120	120	120
Wash Time (min)	35	35	35
Rinse Time (min)	10	10	10
Sanitize Time (min)	10	10	10
Dry Time (min)	10	10	10
Wash Temp (°F)	120	120	120
Rinse Temp (°F)	120	120	120
Sanitize Temp (°F)	120	120	120
Dry Temp (°F)	120	120	120

CYCLE STORY — What does each cycle do...

FULL CYCLE

Designed for normal dishwashing loads. A complete operation which thoroughly washes and dries all of your dishes, glassware, silverware, pots, pans and kitchen utensils.

RINSE & HOLD

A cycle mode to remove sticky surface soil from dishes to be held for full washing cycle at a later time.

ENERGY SAVER

Shorter wash cycle of 35 minutes, but eliminates the dry cycle. Electrical usage is cut in half — a saving of about 10 kilowatt-hour.

SUPER SCRUB

Heavily soiled pots, pans and dishes get an extended wash time to "super scrub" them sparkling clean.

Form No. DW-2

SANI-HEAT

Adds the extra protection of a 165 degree final rinse. Incoming water is heated by the patented Waste King heater to a high sanitizing final rinse.

Manufacturers of the finest
Disposers, Dishwashers
and Churn-Gro Stools.

WASTE KING
DIVISION OF NORRIS INDUSTRIES



5115 District Blvd., Los Angeles, CA 90040
Phone (213) 449-6111

Made in U.S.A. 570

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enter the following order:

1. Respondent Norris Industries, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at One Golden Shore, Long Beach, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

PART I

It is ordered, That Norris Industries, Inc., [hereinafter referred to as the respondent], its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of dishwashers in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can sterilize or destroy all microorganisms on utensils placed in the dishwasher.
2. Representing directly, or by implication, that the stainless steel parts in any dishwasher manufactured or sold by respondent are rustproof or will not rust under normal household conditions.
3. Representing, directly or by implication, that the disposo-drain in any dishwasher manufactured or sold by respondent will remove all soft food waste from the dishwasher.
4. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can completely clean dishes, cookware, and other utensils placed in the dishwasher, without prior scraping, scouring, or rinsing.
5. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can be randomly loaded or that there are no special instructions to follow when loading.

PART II

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of major home appliances in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Making any statements or representations, directly or by implication, concerning the performance of such products unless at the time that the statements or representations are made respondents possess and rely on a reasonable basis for such statements or representations, which shall consist of competent and reliable scientific test, as defined in Paragraph One (b) hereafter.
(b) For purposes of this order a "competent and reliable scientific test" is one in which one or more persons with education, knowledge, and experience in the field conduct a test and evaluate its results in an objective manner using testing, evaluation, and analysis procedures generally accepted in the profession and which best insure valid and reliable results. Moreover, the test results must either accurately predict, or be correlated with, the results that a consumer ordinarily would obtain using the product under normal household conditions.
2. Failing to make a "clear and conspicuous disclosure" (as that

term is defined in the FTC's Statement of Enforcement Policy of October 21, 1970) that product features, depicted or described in advertising for a product, are not applicable to certain models. Such disclosure shall include the model number (and name of the model if applicable) and the product features which do not apply to such model(s).

3. Making any statements or representations, directly or by implication, in connection with the advertisement of any such product which are inconsistent in any material respect with any statements or representations contained directly or by implication in post purchase material(s) supplied to the purchaser of such products.

4. For purposes of this order the term "major home appliances" means the following appliances presently manufactured or sold by the respondent: automatic dishwashers; garbage disposers; trash compactors; and microwave ovens.

PART III

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and their officers, representatives, and agents and employees; directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of "major home appliances" in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain the following accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) documentation in support of and on which respondent relied in making any claim included in advertising, sales promotional material, or post purchase materials, disseminated by respondents or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or subsidiary, concerning the performance characteristics of any of Respondent's major home appliances;

(b) documentation which contradicts, qualifies or calls into serious question any claim included in advertising, sales promotional material or post purchase materials disseminated by respondents or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or subsidiary, concerning the performance characteristics of any respondent's major home appliances.

Such documentation shall be retained by respondent for a period of

three years from the date such advertising, sales promotional, or post purchase materials were last disseminated.

PART IV

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

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its officers, agents, representatives or employees of the respondent's Thermador/Waste King division who are engaged in the preparation, placement, or review of advertisements for the "major home appliances" defined in this order.

It is further ordered, That the respondent shall, within sixty (60) days after service upon them 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.

ADVISORY OPINIONS

Proposed course of action by gerontology research foundation does not qualify for Non-Profit Institutions Act exemption to the Robinson-Patman Act. [File No. 783 7007, Foundation for Later Life Enrichment Fund, July 19, 1978]

Advisory Opinion Letter

July 19, 1978

Dear Mr. Helfand:

This is in response to your letter of November 7, 1977, requesting advice concerning the exemption to the Robinson-Patman Act provided by the Non-Profit Institutions Act, 52 Stat. 446, 15 U.S.C. § 13c.

The Commission understands that the Foundation for Later Life Enrichment is a not-for-profit, non-private foundation, under Section 509(a)(2) of the Internal Revenue Code. The Foundation was created to fund gerontology research. You have advised that, in this connection, it intends to provide high quality goods and services to the aged at low cost.

Certain manufacturers reportedly have agreed to donate products; others will sell to the Foundation at wholesale prices. Your question is whether manufacturers, under the Non-Profit Institutions Act's exemption, may sell products to the Foundation for resale at prices below wholesale, making the difference in price a donation to the Foundation.

The Non-Profit Institutions Act exempts from the requirements of the Robinson-Patman Act "purchases of their supplies for their own use * * * by charitable institutions not operated for profit." Assuming, but without need to decide, that a gerontology research foundation would come within the class of institutions covered by the Non-Profit Institutions Act, the issue presented is whether the purchase and resale transactions here proposed would constitute purchases of supplies for its "own use" by the institution in question. The Commission has concluded that they would not.

In *Abbott Laboratories v. Portland Retail Druggists Ass'n, Inc.*, 425 U.S. 1 (1976), the Supreme Court construed the language "for their own use", when applied to hospitals, to mean "use" that is part of and promotes the intended institutional operation of the hospital in the care of persons who are its patients. The dispensation or sale of

drugs to patients under the hospital's care, or to persons essential to the hospital's function, were deemed to be for the hospital's "own use". Prescription sales by the hospital to classes of persons such as *former patients* or *walk-in buyers*, on the other hand, were deemed *not* to be within the exemption. As the Court explained:

* * * such sales would make the commercially advantaged hospital pharmacy just another community drug store open to all comers for prescription services and devastatingly positioned with respect to commercial pharmacies. This would extend the hospital's own use concept beyond that contemplated by Congress in 13c. [425 U.S. pp. 17-18.]

The Commission does not view the purchase of products for resale to the elderly as in any manner a function integral to the operation, institutionally, of a gerontological research foundation. The question that is presented is not with respect to the status of gifts or contributions nor does it deal with the status of supplies purchased for consumption or use by the Foundation itself or its staff. Although the proposed purchase and resale activity may accrue to the Foundation's benefit and the proceeds therefrom utilized for its general purposes, that is not enough. The exemption applies only to purchases by a charitable institution not operated for profit, when such purchases are for the institution's "own use".

The Commission, in this regard, notes the statement by Justice Marshall, in his concurring opinion in *Abbott*, respecting the Congressional intent:

* * * Congress was primarily interested in directly aiding nonprofit institutions by lowering their operating expenses, but not interested in indirectly aiding such institutions by providing them with the means of raising additional money - particularly when such resales of supplies would put the institution in competition with retail business not eligible for exemption * * *. [425 U.S. pp. 22-23.]

The Commission, accordingly, does not regard the purchase of products at prices below wholesale, by the Foundation for Later Life Enrichment, for resale at retail to the elderly, exempt from the requirements of the Robinson-Patman Act. The Non-Profit Institution's exemption is limited to purchases of supplies, by covered institutions, for their own use.

By direction of the Commission.

Letter of Request

November 7, 1977

Dear Sir:

I am serving as the Director of the Foundation for Later Life Enrichment. We were designated a non-profit, non-private founda-

tion by the Internal Revenue Service under Section 509(a)(2) of the Internal Revenue Code on January 26, 1977. In addition to funding gerontology research, we were created to provide high quality goods and services to the aged at low cost.

So far, several manufacturers have agreed to donate products to us, and a number have agreed to sell products to us at wholesale prices. However, a question has arisen about the possibility of manufacturers selling goods to us at prices below wholesale and making the difference in price a donation to the Foundation. We are not clear about whether or not this constitutes a violation of the Robinson-Pattman Act, in view of the fact that we are recognized as a non-profit foundation, and may be exempt under Section 5 of the Federal Trade Commission Regulations.

On Monday, October 31, 1977, I discussed this with David Paul and Alan Rubinstein in your New York office. They recommended I write requesting an Advisory Opinion from your office. Could you please clarify our status in regard to these apparently conflicting regulations?

Thanking you in advance for your assistance in this matter, I remain

Yours truly,
/s/ Stephen Helfand

Cigarette companies advertising, without health warning disclosure, via recorded telephonic advertising messages, provided no interstate calls are involved held illegal. [File No. 783 7010, Fonawin Corporation, August 18, 1978]

Advisory Opinion Letter

August 18, 1978

Dear Mr. Schaftel:

The Commission has decided that consideration of the course of action you have proposed is appropriate. Your proposal raises the question, in substance, whether cigarette companies may legally advertise, without a health warning disclosure,* via recorded telephonic advertising messages, provided no interstate calls are involved. The Commission's conclusion is that they may not.

The Commission understands that your company, Fonawin Corporation, under an exclusive contract with the Offtrack Betting Corporation of New York (OTB) operates a recorded telephone answering service (60 second recorded announcements) that provides horse racing results. The announcement service is supported by commercial advertising messages included within such recordings.

Technology reportedly exists to separate out the non-toll intra-state aspect of this service, so that no interstate calls would receive cigarette advertising messages and thus the Federal Communications Commission has advised your client that this activity is not within its jurisdiction. You advise that, for the most part, persons calling the service are "bettors." Because persons under 18 are not eligible to place bets with OTB, you urge that the proposed cigarette advertising would have little, if any exposure to children.

It is the Commission's opinion that the proposed advertising would be within the jurisdictional reach of the Federal Trade Commission Act. By advertising cigarettes to the public and failing to disclose that cigarette smoking is dangerous to health, the cigarette manufacturer-advertisers would be representing thereby, directly or by implication, that cigarettes are not dangerous to health. Although this activity is not covered by the Commission's order in *Lorillard, et al.*, 80 F.T.C. 455 (1972), the principles articulated in those orders apply here. A failure or refusal to make such disclosure in the proposed advertising would, in the Commission's view, violate

* "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health."

Section 5 of that Act which declares that unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce are unlawful.

By direction of the Commission.

Fourth Letter of Request

May 15, 1978

Dear Mr. Chairman:

More than a year ago I asked your commission for a ruling on the following subject:

I requested that cigarette companies be allowed to advertise their product without the warning disclosures on my telephone line that gives the New York race results. No one under eighteen years of age is allowed to bet by the Offtrack Betting Corporation of New York with whom I have an exclusive contract.

I have gone months without hearing from your Bureau of Consumer Protection, and then have received sporadic letters from them, the last on January 24, 1978 from Russell Hatchl stating "My superior in the Bureau of Consumer Protection determined that a formal commission opinion is inappropriate, because issues of cigarette advertising are pending in the courts."

When might I expect to get a definitive opinion from you?

Sincerely yours,

/s/ Stuart Scheftel

Fourth Staff Response

January 24, 1978

Dear Mr. Scheftel:

This is in response to your January 19, 1978 letter. You had noted receipt of my November 9, 1977 letter to you which gave my opinion on the subject of warning disclosures in cigarette advertisements included in one minute recorded telephone announcements of horse racing results. You then repeated your request for an opinion on the subject by the Commission itself.

Since my November 9 letter, my superiors in the Bureau of Consumer Protection determined that a formal Commission opinion is inappropriate because issues of cigarette advertising are pending in the courts. This decision was communicated to you in the November 21, 1977 letter from Tracy Westen, Deputy Director,

Dangerous to Your Health." This remedy was designed to insure that each time consumers were confronted with a cigarette advertisement they were warned about the grave health risks involved in smoking. While *Lorillard* by its terms does not cover your proposed activities, the Commission's power to prohibit "unfair or deceptive acts or practices in or affecting commerce" does.

Therefore, each of the cigarette advertisements which you propose to run should include the above warning statement. For the medium involved, a clear and conspicuous disclosure should, of course, be in the same language, e.g., Spanish, as the advertisement. It should be transmitted at the same apparent loudness as the advertisement. Its impact should not be diluted by competing background noises. It could appear at the end of the particular advertisement to which it applies.

Sincerely,
/s/ Russell Hatchl
Russell Hatchl
Attorney

First Staff Response

November 8, 1977

Dear Mr. Scheftel:

We owe you an apology for the delay which has occurred in handling your request for an advisory opinion for the telephone cigarette advertising your company is contemplating. Although a draft response to your inquiry was prepared by me and reviewed by our General Counsel's office back in July, the matter apparently became misplaced before the office of the Director of the Bureau of Consumer Protection reviewed it. We apologize for this.

I can assure you that this matter is now receiving the proper attention, and although I cannot promise an advisory opinion by any specific date, I am confident that the delays which occurred in the past will not recur.

Sincerely,
/s/ Russell Hatchl
Russell Hatchl
Attorney

Second Letter of Request

November 2, 1977

Dear Chairman Pertschuk:

Several months ago I wrote to you seeking a conference with your agency concerning legal requirements under the jurisdiction of your

1022

agency applicable to possible cigarette advertising on my company's telephone announcement service. You did not reply. Rather, an FTC staff member, Dolores Montgomery, contacted me to suggest that I convert my letter into a request for Advisory Opinion. This was done, the request being filed under date of June 3, 1977 (Case No. 26718666). Hearing nothing for three months I inquired by letter to Ms. Montgomery in September. No reply.

Approximately two weeks ago I contacted Ms. Montgomery by telephone, who referred me to Murray Francis Slagel of your staff to whom I spoke on the telephone. I was assured I would receive a response to my request within the next day or two. To date, I have not received even the courtesy of a return call or letter.

It is now approximately six months since my first contact with you. I have no answer to what must surely be a rather simple question, and it now appears that I am getting a "run-around" from FTC staff.

I am sure the FTC staff thinks it is working on important public business, and after all my inquiry only affects (in however vital a way) one small private business. But surely I am entitled to some answer to my request (the agency's rules so indicated)- and within a reasonable time. As I recall, President Carter said something about bureaucratic responsiveness (or lack thereof) in his campaign.

Let me reiterate that what I seek is the advice which I was led to believe your agency is both authorized and required by law to give. While my problem may be of little moment in Washington, the present uncertainty is very damaging to my business.

Very truly yours,
FONAWIN CORPORATION
By /s/ Stuart Scheftel
Stuart Scheftel
President

Letter of Request

June 3, 1977

Dear Sir:

The purpose of this letter is to request, on behalf of Fonawin Corporation (Fonawin), an Advisory Opinion pursuant to Subpart A, Part 1, of the Commission's Procedures and Rules of Practice.

Fonawin is engaged in the business of providing one-minute

recorded announcements of horse racing results as received from tracks where New York City's Offtrack Betting Corporation (OTB) handles races.

This Corporation with which our company has an exclusive contract is controlled by the State of New York and returns approximately One hundred million dollars a year to State, City and Local funds.

It provides this service to any person calling a certain New York City telephone number (999-2121), utilizing the New York Telephone Company 9A Multi-Customer Announcement Service (which has the technical capacity to accommodate simultaneously up to 3300 incoming telephone calls on a single line). Fonawin's recorded racing information service is supported by the sale of advertising messages, which are incorporated into the recorded 60-second announcements.

Under date of July 28, 1976, the Federal Communications Commission issued a declaratory ruling concerning the applicability of Section 6 of the Public Health Cigarette Smoking Act of 1969 (15 U.S.C. § 1335) to the carriage of cigarette advertising in connection with the non-toll intrastate aspect of Fonawin's service; a copy of that ruling is attached hereto. More particularly, Fonawin advised the FCC that it had become technically feasible to separate the non-toll intrastate aspect of its service (*i.e.*, local calls made in the 212 Numbering Plan Area) from other calls, and sought guidance whether, under these circumstances, the carriage of cigarette advertising in the non-toll intrastate aspect only was prohibited. The FCC's ruling was to the effect that Section 6 of the Cigarette Smoking Act of 1969 does not preclude the carriage of cigarette advertising in the limited circumstance of the non-toll intrastate aspect of Fonawin's service.

Notwithstanding the FCC ruling, there remains a question whether any statutory or regulatory requirement within the general jurisdiction of the Federal Trade Commission would affect the carriage of such cigarette advertising. Specifically, an Advisory Opinion is sought as to whether such cigarette advertising would have to carry some form of warning to the effect that cigarette smoking may be harmful to the smoker's health.

At present, Fonawin is not carrying and has not sold any cigarette advertising and, indeed, has not separated the non-toll intrastate aspect of its service. Before pursuing such separation and before pursuing further the sale of cigarette advertising, it seeks Commission guidance with respect to the warning subject. This is because Fonawin has reason to believe that a warning requirement, if applicable, would discourage cigarette companies from advertising

on Fonawin's service (owing, apparently, to the brevity of the advertisement and its oral form). Consequently, an Advisory Opinion is sought in order that Fonawin can decide whether to proceed to separate the non-toll intrastate aspect of its service and to pursue further the sale of cigarette advertising.

So far as Fonawin is aware, the matter raised by this request for Advisory Opinion is not the subject of any current proceeding or ruling by this Commission, or any other agency or government.

There is one additional matter which may be of interest to the Commission. Fonawin is under the impression that, for the most part, persons calling its service are OTB bettors (the Fonawin number is conspicuously posted in the OTB betting parlors). Persons under 18 years of age are not eligible to place bets with OTB. Consequently, it is to be presumed that such cigarette advertising as may be carried on the non-toll intrastate aspect of Fonawin's service will have little, if any, exposure to children.

Should the Commission desire additional information with respect to Fonawin's service, or should the Commission consider a conference useful, Fonawin is prepared to cooperate fully. Contact can be made to Fonawin's President: Mr. Stuart Scheftel, 4 West 58th Street, New York, New York; telephone number (212) Plaza 9-2929.

Very truly yours,
FONAWIN CORPORATION
by /s/ Stuart Scheftel
Stuart Scheftel
President

Initial Contact Letter

April 28, 1977

Dear Chairman Pertschuk:

I am writing to request an opportunity to meet with you, or your representative, concerning a matter of importance to Fonawin Corporation, of which I am the major stockholder.

Fonawin is engaged in the business of operating a telephone announcement service in New York City. A person calling Fonawin's number receives a recorded announcement containing late horse racing results on races for which New York City's Offtrack Betting Corporation offers wagering. This service has been developed in conjunction with OTB, a corporation of the City of New York, and the Fonawin number is posted in the various OTB betting parlors.

Fonawin realizes revenues by carrying a brief advertising message as part of each recorded announcement.

In July 1976, the Federal Communications Commission issued a declaratory ruling that the carriage of cigarette advertising in connection with the non-toll, intrastate aspect of Fonawin's announcement service would not contravene Section 6 of the Public Health Cigarette Smoking Act of 1969. A copy of the FCC's ruling is attached.

While the FCC ruling has cleared the way for cigarette advertising in connection with Fonawin's purely local announcement service, it does not address the question of whether there are any related requirements in connection with such advertising which may arise from statute, rule or policy under jurisdiction of the Federal Trade Commission. Specifically, I have reference to the so-called "warning statement" to the effect that cigarette smoking may be harmful to health.

In soliciting advertising business from cigarette companies, Fonawin has noted certain uncertainty as to what your Commission would require with respect to Fonawin's carriage of cigarette advertisements. Fonawin's objective is to comply with all applicable legal requirements; at the same time, we hope to avoid having our business disrupted by uncertainty as to applicable government requirements. Accordingly, I seek a meeting in order that this matter may be clarified.

Your office may contact me at the above number with respect to a mutually convenient time for a meeting in the offices of the Commission. I shall endeavor to make myself available at your convenience.

Very truly yours,

/s/ Stuart Scheftel

P.S. Fonawin also operates the Weather Service for the entire New York Long Island and Westchester areas for the New York Telephone Company. However, this Fonawin Service does not accept advertising.

/s/ S.S.

1031

Legality of use of mathematical model to forecast gross volume of shipments within furniture industry. [File No. 783 7011, Business and Institutional Furniture Manufacturers Association, September 19, 1978]

Advisory Opinion Letter

September 19, 1978

Dear Mr. Johnson:

This responds to your request for an advisory opinion on the use, by the Business and Institutional Furniture Manufacturers Association (BIFMA), of a model to forecast gross volume of shipments in the industry.

The Commission understands that BIFMA is a trade association with membership open to all firms in the industry upon payment of annual dues graduated according to firm size, and that current membership accounts for about 75% of industry sales. The Commission further understands that BIFMA proposes to engage an independent accounting firm to use a mathematical model, based entirely on publicly available economic indicators, attempting to forecast total quarterly office furniture shipments (*i.e.*, forecasts will not be broken down by office furniture type or product category) for the ensuing twelve-month period. There will be no exchange or disclosure whatever of individual firm data. It is proposed that access to the forecast shipment data be limited to members of BIFMA.

Shipment forecast arrangements by competitors in particular marketing environments could raise serious antitrust concerns. On the basis of available information indicating low industry concentration and the presence of differentiated products, however, the Commission is of the view that the likelihood of anticompetitive use of the proposed forecast data is remote. The Commission cautions that the forecasts must not be used by the Association or its members so as to restrict independent business decisions by any individual firm, to secure adherence to quotas of production or sales, or to effect any other such unlawful trade restraint.

Accordingly, the Commission does not presently object to the proposed forecast of total shipments, subject to the above qualifications.

By direction of the Commission.

Letter of Request

May 10, 1977

Dear Mr. Secretary:

We are general counsel for the Business and Institutional Furniture Manufacturers' Association (BIFMA) and in that connection we are submitting this request for an advisory opinion with respect to a proposed sales forecasting program. The proposed program is not currently under investigation by or the subject of any proceedings before the Commission. The program is scheduled for implementation in June of 1977. However, we are authorized to represent to the Commission that the program will not be instituted until we have received the requested opinion.

Background

BIFMA is a Michigan nonprofit corporation which was formally organized in June of 1973. Copies of the association's Articles of Incorporation and Bylaws are enclosed as Exhibits A and B.* The association was organized for the benefit of members of the industry and the public, particularly in the areas of development and standardization of test methods and procedures, statistical compilation and reporting, and the development of material standards.

Enclosed for your information as Exhibit C* is a current copy of the membership list of BIFMA. It is estimated that current members account for over 75% of the national sales of the office furniture industry.

Under Article II, Section 1, of the corporation's Bylaws, membership in the association is open to all manufacturers of business and institutional furniture. The association encourages manufacturers to become members and is currently campaigning to increase its membership. The annual dues for membership are graduated according to the size of the manufacturer in terms of annual sales volume, and are set forth in the following table:

<i>Annual Sales Volume</i>	<i>Annual Membership Dues</i>
Under \$1 million	\$ 540
\$1 to \$4.9 million	1,020
\$5 to \$9.9 million	1,500
\$10 to \$14.9 million	2,100
\$15 to \$24.9 million	2,700
\$25 to \$49.9 million	3,300
Over \$50 million	4,200

* Not reproduced herein.

As an example of BIFMA's activity, the association has developed standards for office chairs which have been accepted and published by the American National Standards Institute. BIFMA is actively pursuing similar standards with respect to the manufacture of other items of office furniture.

As an additional activity, BIFMA is sponsoring the collection, compilation and periodic reporting of industry new orders, shipments, unfilled orders and inventories as well as net sales, days' accounts receivable are outstanding and inventory turnover information. Membership data is reported to Seidman & Seidman, certified public accountants, who are responsible for the compilation and reporting of the statistics. No other persons have access to the data of individual firms, and the reports contain no reference to individual firm data. Seidman & Seidman computes the arithmetic averages of the data in each category submitted by members and reports to each member that firm's individual data and the arithmetic average of data for all reporting firms and for all reporting firms by three sales size categories (A - up to \$10,000,000; B - \$10,000,000 to \$40,000,000; and C - over \$40,000,000). No individual firm receives any data of or comparison with any other individual firm.

Proposed Course of Action

We are enclosing herewith, marked as Exhibit D,* a document entitled "BIFMA Forecasting Research Program - A Consolidated Report." This document sets forth the research that has been done by BIFMA and its consultants with regard to the development of a forecasting model to forecast office furniture shipments. At page 25 of this document, the forecasting model is set forth. BIFMA proposes to engage Seidman & Seidman to utilize this forecasting model and prepare on a quarterly basis a forecast of total office furniture shipments for the next twelve month period showing projected gross shipments on a calendar quarter basis during that twelve month period.

It is proposed that Seidman & Seidman will distribute the quarterly forecasts of office furniture shipments only to members and associate members of the association. This limitation is predicated upon the fact that all manufacturers in the business and institutional furniture industry are encouraged to become members,

* Not reproduced herein.

there are no conditions of membership which would operate as a barrier to exclude any manufacturer, and upon the fact that the association has expended considerable amounts of money in developing the program and will expend considerable amounts of money in the future toward the production of the forecasts and further developments and refinements in the program which would be difficult if not impossible to allocate on a basis which would result in a fair sharing of these costs by members and nonmembers of the association.

Request for Advisory Opinion

We respectfully request that the Commission render its advisory opinion with respect to the legality of the above proposed course of action. In order to expedite this matter, we would be happy to supply any explanation or additional information to members of your staff at their convenience. In this regard, your staff should feel free to telephone the undersigned on a collect basis at any time.

Thank you for your consideration.

Very truly yours,
VARNUM, RIDDERING, WIERENGO
& CHRISTENSON
/s/ Donald L. Johnson

1035

Proposed advertising plan to disseminate cigarette advertisements headlining, without qualification, tar values higher than latest published FTC number disapproved. [File No. 773 7016, Lorillard, September 26, 1978]

Advisory Opinion Letter

September 26, 1978

Dear Mr. Gastman:

This is in response to your request for an advisory opinion as to whether Lorillard may disseminate cigarette advertisements headlining, without qualification, a tar value higher than the latest published FTC number.

The Commission understands that your request was transmitted orally to a Commission staff attorney. Although requests for advice should be submitted in writing to the Secretary of the Commission, §1.2 of the Commission's Rules of Practice, the Commission has determined to render an advisory opinion because it has sufficient information regarding the proposed course of action.

Under the agreement submitted to the Commission by Lorillard and seven other cigarette companies, dated December 17, 1970, cigarette advertisements must include tar and nicotine data from Commission test results most recently published in the Federal Register, subject to certain specified exceptions necessary to meet deadlines for submission of advertising copy. Lorillard's proposed advertisements would deviate from this industry agreement, by permitting cigarette advertisements to feature a tar number greater than the latest FTC tar number for an indeterminate length of time.

The Commission cannot give its approval to Lorillard's proposed advertising plan. In the Commission's view, it would be deceptive to advertise a tar figure which is higher than the latest applicable FTC tar figure. If the headlined tar level differs from the tar figure disclosed in accordance with the cigarette industry's voluntary disclosure agreement, consumer confusion might be generated. At the same time, the Commission could not condone the practice of utilizing a higher headlined tar figure in the voluntary disclosure and labelling the figures "By FTC Method," since the figures would not actually be the result of the FTC method.

Therefore, in the Commission's opinion, tar values which are set forth in cigarette advertisements must be consistent with the latest applicable FTC tar number.

By direction of the Commission.

1037

When needed pharmaceuticals are unavailable or difficult to obtain, non-profit hospital may resell the needed pharmaceuticals to the general public as humanitarian gesture during emergency caused by medicaid strike. [File No. 773 7009, St. Peter's Hospital of the City of Albany, September 27, 1978]

*Revised Opinion Letter**

September 27, 1978

Dear Mr. Iseman:

This is in response to your letter of December 20, 1976, requesting advice concerning the exemption to the Robinson-Patman Act found in the Non-Profit Institutions Act, 52 Stat. 446, 15 U.S.C. Sec. 13c.

The Commission understands that your client, St. Peter's Hospital of the City of Albany, is a not-for-profit corporation currently receiving preferential price treatment in its purchase of pharmaceuticals as permitted by the above-cited exemption of the Robinson-Patman Act; that your client would like to resell pharmaceuticals, at the same reduced price it pays its supplier, to a neighboring, not-for-profit nursing home which currently purchases its drug needs at retail from local druggists; and that your client would like to resell pharmaceuticals to the general public during the medicaid strike, should pharmaceuticals become otherwise difficult or impossible to obtain. You seek advice on whether such resales are permissible under the Robinson-Patman Act.

The Non-Profit Institutions Act exempts from the Robinson-Patman Act "purchases of their supplies for their own use by * * * hospitals, and charitable institutions not operated for profit." The Supreme Court in *Abbott Laboratories v. Portland Retail Druggists Ass'n, Inc.*, 426 U.S. 1 (1976), held that the phrase "for their own use" limited the classes of individuals to whom the supplies could be resold. However, the Commission does not believe these limitations were intended to apply to resales of supplies, at cost, by one charitable institution to another that are limited, in turn, to the latter charitable institution's own use. A resale of this nature would constitute a not-for-profit transfer of supplies from one institution, eligible under the exemption, to another such institution, also eligible under the exemption. In the Commission's view, the exemption was intended to insulate from Robinson-Patman applica-

* For the original Advisory Opinion Letter and the Letter of Request, see 89 F.T.C. 689.

tion all purchases of supplies (for their own use) by the designated classes of institutions not operated for profit. The transactions, as above described, would not appear in conflict with such a purpose. The Commission, accordingly, would regard the resale, of pharmaceuticals by your client to the nursing home at the same reduced price that it paid its supplier as not altering its exempt status under the Non-Profit Institutions Act. Such pharmaceuticals must be acquired for the nursing home's "own use" as that language was interpreted in *Abbott Laboratories, supra*, for the exemption to apply.

The question of whether a non-profit hospital such as your client may open its pharmacy to the general public in an emergency situation was addressed specifically by the Supreme Court in the *Abbott Laboratories* case. We direct your attention to that portion of the decision which states that:

[W]hen the hospital pharmacy is the only one available in the community to meet a particular emergency situation[,] * * * [s]o long as the hospital pharmacy holds [that] situation within bounds, and entertains it only as a humanitarian gesture, we shall not condemn the hospital and its suppliers to a Robinson-Patman violation
* * *

[*Id.* at 18.]

Accordingly, the Commission is of the opinion that if needed pharmaceuticals are not available or difficult to obtain, your client may resell the needed pharmaceuticals to the general public as a humanitarian gesture during the emergency caused by the medicaid strike.

By direction of the Commission. Commissioner Pitofsky did not participate.

1039

Proposed price reporting service for retail chain food manufacturers. [File No. 783 7002, Mathews Research, September 29, 1978]

Advisory Opinion Letter

September 29, 1978

Dear Dr. Mathews:

This is in response to your request for advice concerning a proposed price reporting service for retail chain food merchandisers, styled Full Range Market Monitor.

Your proposal contemplates that participating supermarket chains would furnish your firm, on a weekly basis, computer printouts listing all of the items sold in their stores together with the current selling price of each item. The prices supplied would be effective as of the date submitted but with no guarantee as to the length of time those prices would remain the same. This price information would be collated for release by your firm the third day after receipt. You have advised that the major chains in your area have indicated interest but are unwilling to provide price lists without a Commission opinion respecting possible law violation.

It is proposed, as the Commission understands, that the price survey data would be available, not only to the participating food retailers, but to anyone willing to use the service at the established rates. This would include food and grocery manufacturers and suppliers, government, public service groups and individuals. Some purchasers of this information, such as manufacturers, might only wish to purchase the retail price data pertaining to their own product group or to obtain a partial report. Such purchasers, in addition, might not need the retail price information so promptly. However, you have indicated that participating retailers will need the reports promptly enough to enable timely price adjustments or permit contemporaneous questioning of suppliers concerning why a lower priced chain was able to obtain a supplier's product for less.

You have also inquired concerning the legal effect of particular variations in the proposed service. Two involved alternative methods of identifying the participating stores, by name or letter code; two related to limiting price survey data to only the participating retail chains; and one variation proposed the purchase of price data with a sale of the collated data back to the participating chains. None of

these variations would serve to alter the Commission's basic concern with respect to the subject proposal.

Retail grocery price surveys which make available to consumers competitive price information, enabling them to better formulate purchasing decisions, are, in the Commission's view, of benefit to consumers and of benefit to retail level price competition. The Commission has no objection to such surveys. Nor would the Commission's concern here be the same if the subject survey was limited to observed prices. However, your proposal goes beyond this by providing for the exchange of current weekly pricing schedules among competing retail grocery chains. Although the prices reported are subject to change at any time, they do reflect areawide pricing decisions by each chain involved in the program. Access to such information over time might well enable a chain to anticipate the pricing patterns of its competitors and facilitate the coordination of future pricing decisions. Particularly in highly concentrated local markets (such as the Youngstown/Warren, Ohio market proposed by you as a test market) the danger that price stabilization would result is sufficiently great that the Commission is unable to approve the subject proposal as presented.

By direction of the Commission.

Second Letter of Request

January 17, 1977

Dear Ms. Cotter:

Shortly after your letter of March 11, 1976, arrived John Wilcox moved. We recently discovered that the answers to your questions were not sent to you, so that you could proceed with the advisory opinion of the Market Monitor service. The following are the details addressed in each question and numbered accordingly. (I have also enclosed a copy of your letter.)

1. Price information is to be collected weekly and is to be published weekly on the third day after the information is received by Mathews Research.
2. Prices are effective as of the date they are submitted to us by the store operator. There is no guarantee as to the length of time the prices will remain the same.

1039

3. A sample page from the Market Monitor report is enclosed.*
4. All clients will receive the same information; it will be available to anyone willing to use the service at the established rates. Food manufacturers may only wish to purchase information that pertains to their product group, or only require a partial report.
5. The retailers participating in this project will be from the divisional (or regional) levels. Our first test is to work with the chains that have stores located in the Youngstown/Warren SMSA. The divisions are located in Youngstown; Sharon, Pennsylvania; Cleveland, Ohio; and Pittsburgh, Pennsylvania. The prices and product lists will only be reported for the Youngstown/Warren SMSA. If the test is successful we would like to expand the service to other areas.
6. If the Youngstown/Warren SMSA test is successful, Mathews Research intends to expand the service into other areas located in Ohio, Pennsylvania, Western New York, Michigan, Indiana, and Illinois. Our resources are limited, and slow growth is anticipated.
7. Each grocery division has a computer print-out of all products, sizes and prices the company stocks. Each store manager prices his stock according to this list. The computer print-outs of all products, sizes and prices each division carries will be received by Mathews Research. We have not been able to obtain copies of the print-outs but have enclosed a copy of one that has wholesale prices.
8. As far as we understand, the Youngstown/Warren SMSA is a one price zone. Consequently, we will only be furnished one price for each product.
9. The information will enable retailers to be competitive in their markets. For example, if a price in one chain is lower than another the higher price chain would question the manufacturer as to why the lower priced chain was able to obtain the product for less. Moreover, the higher priced chain would question their pricing structure and if too high might lower their prices, thus enabling slightly more competition in a market area. If the report were not timely they would not be able to adjust their prices and if a manufacturer were offering discounts within a given time period they would not be able to take advantage of the lower discount rate.

* Not reproduced herein.

Product manufacturers would be able to use the information to analyze why a product is doing well or poorly in a market. For example, the retail price is higher in one market or not stocked in a market: this could explain why the product is not doing well in that area. It is not essential that the product manufacturers receive the Market Monitor as quickly as grocers, but to offer data more than two months old would weaken the value of our service; they could obtain this information in that length of time from their salesmen and other research services.

10. Representatives of food stores have indicated to us that the information available through the Market Monitor would be more reliable than traditional methods of collecting data, and at a lower cost to them.

11. A vice president of a food store chain indicated to us that we should propose the consolidation of pricing lists from several chains. He knows this is being done in California and those who participate are finding it useful. It gives them a complete list of store items at a lower cost.

We asked the major chains operating in this area and they have indicated their interest, and would be willing to give us their price lists. Before they proceed they want an opinion from the F.T.C. to insure they are not in violation of your regulations. Moreover, Mathews Research would not wish to provide a service that would be an embarrassment to our clients at a later date.

I certainly appreciate your interest and help in this matter. If I can provide any additional information please let me know.

Sincerely,

/s/ Donald H. Mathews

Donald H. Mathews, Ph.D.

MATHEWS RESEARCH

Staff Letter of Response

March 11, 1976

Dear Mr. Wilcox:

We are in receipt of your letter of February 16 requesting an advisory opinion relating to a proposed marketing research service, the "Full Range Market Monitor."

The matter you raise appears to satisfy the requirements of Section 1.1 of the Commission's Rules of Practice. The staff intends

to submit this matter of the Commission for issuance of an advisory opinion. However, the final decision as to whether to issue an opinion is made by the Commission in the course of its substantive consideration of the issues. I, of course, cannot inform you what action the Commission will ultimately take.

The legality of the plan is dependent on factual assessments of the market involved, the parameters of the plan and its probable effect on price competition. To respond to your inquiry, the following supplementary information is needed:

1) State how often price information will be collected (weekly, twice a month, monthly, every other month) and how often the Market Monitor reports will be published. How soon after the price information is obtained will the Market Monitor report be available?

2) Identify the effective dates of the prices reported: whether the reported prices will be effective on a specified date in the future; whether they are effective presently and will remain in effect during some or all of the reporting period; whether they are the most recently effective, current prices; or whether some other kind of price information is to be reported.

3) Submit a sample of each Market Monitor report as to which an opinion is desired.

4) For each report form provided in response to Item 3, identify all potential purchasers that have indicated an interest in purchasing such report (specifying whether retailer or product supplier) and indicate whether the report will be available to anyone willing to purchase it.

5) For each report form identified in response to Item 3, identify or describe in detail the retailers or classes of retailers that will participate or will be asked to participate, by providing price information.

6) Describe the geographical areas to be covered by the above reports.

7) Submit a sample of each type of inquiry form that will be used to collect price information from retailers, together with any explanatory material which would accompany or describe the price data to be so provided.

8) Will participating food store firms provide more than one comprehensive price list for a given report? If so, describe what will be provided.

9) Describe fully and in detail what you as marketer of this information view as the benefit(s) and/or usefulness of the reports identified in Item 3 to participating retail food stores. (In response to this item, specify the extent to which current price information is

needed and the extent to which such benefits and/or usefulness would be diminished if the price information reported were one month old or six months old.)

10) Have representatives of food stores indicated to you their views as to the benefit(s) and/or desirability of the price information which would be available through the Market Monitor? Have product suppliers so indicated their views? If so, describe separately in detail.

11) Have representatives of food store firms indicated to you various facets of this or similar programs which they like or dislike or favor or disfavor? Have product suppliers so indicated? If so, describe in each instance in detail the positions and reasons suggested.

I would anticipate that once the Commission is in receipt of the information necessary for full consideration of this matter, your inquiry would be submitted to the Commission by the staff for issuance of an advisory opinion within 60 days.

Sincerely,
Margaret A. Cotter
Attorney
Office of General Counsel

Letter of Request

February 16, 1976

Dear Sir:

It is the desire of Mathews Research that the Federal Trade Commission issue an Industry Guide in accordance with ¶ 9801 of Volume III, Trade Regulations Reports, Pages 17,562, and 17,563.

Mathews Research, a marketing research firm located in Youngstown, Ohio, desires to provide a new marketing research service, primarily to food merchandisers. The service is to be called the "Full Range Market Monitor". It is a new service which Mathews is not now providing. Furthermore, this proposed service is not the subject of a pending investigation or other proceeding by the Federal Trade Commission or any other government agency.

A complete description of the proposed "Full Range Market Monitor" is attached for your examination. The first section describes the basic reporting system. The second section deals with

several variations of the basic service. Appendix A* shows a typical layout of a report print out.

The advice Mathews seeks is: 1. Is the basic service in violation of Section 1 of the Sherman Act or Section 5 of the Federal Trade Commission Act? 2. Do any of the five variations noted in section 2 of our proposal change the legality of the proposed basic service?

Mathews Research would appreciate prompt notification of receipt of the request, an indication of whether or not it is the intention of the Commission to issue an advisory opinion on this matter, and an estimate as to the length of time required to process an advisory opinion. A representative of our firm is available for a conference at the pleasure of the Commission.

Very sincerely,
/s/ John P. Wilcox
John P. Wilcox
MATHEWS RESEARCH

PROPOSED NEW "FULL RANGE MARKET MONITOR"

PURPOSE: Mathews Research, an independent marketing research firm will collect, collate, publish and disseminate supermarket prices on the full line of merchandise items sold in supermarkets. The purpose of this service is to provide clients with prompt accurate market information in general and item prices in particular. Mathews Research in this service is a merchandiser of information.

DESCRIPTION OF SERVICE

Section 1. Participating supermarket (chains) management will furnish Mathews Research a list of the items sold in their stores and the current selling price of each item on a regular, schedule e.g., weekly, bi-monthly, or monthly. Mathews Research will then enter each set of items and prices into a computer data bank for future retrieval. Retrieval of data will be in several forms depending on individual clients' needs as described below.

The first and major service is providing pricing information to the supermarket chains who furnished Mathews Research with the original data. Participating chains would purchase from Mathews Research the list of items sold in the area supermarkets with each chain's prices. Reports will be published on a regular basis at the

* Not reproduced herein.

frequency desired by the client: weekly, bi-monthly or monthly. (See appendix 1)*

Other services available to supermarket chains will be lists of the highest prices for each item, the lowest price for each item, the average price for each item and after a period of time price trends per item or per chain.

The second service is to provide food and grocery manufacturers and suppliers with the itemized prices of their goods sold by each supermarket chain. Product managers and brand managers in using this service will be able to track the actual selling prices of their products.

A third service is to Government, public service groups or individuals whereby price information would be for sale on a customized basis. Here the data bank can be addressed to retrieve the information in any manner which suits the needs of the client.

Section 2. Variations which may or may not affect the legality.

What effect on the legality of the proposed service would the following variations have:

1. Chain stores are identified by name on the reports.
2. Chain stores are not identified by name but are masked by listing them as Chain or Supermarket "A", "B", "C" etc.
3. Agreement made with chain furnishing prices that Mathews Research would not sell data to a competitor unless that competitor furnishes their price list in the same manner as all other participants.
4. Agreement made with supermarkets furnishing data that no use of the data would be made other than the distribution to firms who furnished the data.
5. Price lists are purchased (rather than furnished without consideration) from participating chain stores and collated data in turn sold back to them.

* Not reproduced herein.

Compliance opinion as to whether a furniture manufacturer's proposed plan to grant special price quotations, under certain conditions, to dealers competing in bid situations would violate order issued June 30, 1967, 71 F.T.C. 1579. [Docket No. C-1248, Herman Miller, Inc., October 11, 1978]

*Opinion Letter (Revised)**

October 11, 1978

Dear Mr. Moran:

The Commission has considered your request for advice, pursuant to Section 3.61(d) of the Commission's rules, regarding the propriety of a proposed course of action, as set forth in your letter of May 15, 1978. That letter modified your previous two communications, dated April 27, 1977 and August 5, 1977, which were the subject of Commission action on January 6, 1978, wherein the Commission advised that it could not approve your proposal as then constituted. As modified, you seek a determination of whether a plan wherein Herman Miller would grant special price quotations to dealers competing in bid situations would violate a Commission order of June 30, 1967 in the captioned matter.

As presently constituted, the plan would grant special price quotations to dealers in bid situations only. In order to receive the special price in a specific situation, a dealer would have to certify to Herman Miller that (1) it will submit a bid on that job, and (2) that on that job it will not bid products competitive to those products for which it obtains special price quotations from Herman Miller. All dealers which carry the Herman Miller line of products will be notified of the availability of this special pricing.

This plan would operate in the context of bid solicitation by institutions. When an institution solicits a bid, it may do so either by reference to descriptive specifications or by brand name. If brand names are specified, different items may call for different brands.

It is the Commission's understanding that, under the plan as modified by your letter of May 15, 1978, without regard to whether bids are solicited by descriptive specifications or brand names, a multiple line dealer, which wishes to bid Herman Miller products for some items and competing brands for others, can receive Herman

* For background correspondence and original opinion letter, see 91 F.T.C. 1167.

Miller's special pricing on the items for which it bids Herman Miller products.

Under the circumstances, the Commission is of the opinion that the modified proposal would not contravene the Robinson-Patman Act or the outstanding order in this matter. Inasmuch as any Herman Miller dealer will have the option of receiving special pricing on any given item, the Commission believes that the proposed plan is functionally available to all dealers, and hence not discriminatory.

The Commission wishes to note, however, that this advice should not be construed as indicating approval of the condition that a dealer must agree not to bid a competitor's products on items for which Herman Miller has quoted a special price. The Commission understands that respondent has stated that in this respect respondent's proposal is equivalent to the practices of its competitors. Because an extensive investigation would be required to assess the competitive effect (apart from Robinson-Patman considerations), of such practices, the Commission expresses no opinion about that aspect of your proposal.

By direction of the Commission.

/s/ Carol M. Thomas
Secretary

Letter of Request

May 15, 1978

Dear Mr. Thomas:

We are writing on behalf of our client, Herman Miller, Inc., to request the Commission's advice with respect to the propriety of the following described proposed course of action under the Commission's outstanding order entered with the Company's consent on June 30, 1967.

We previously requested the Commission's advice regarding a similar course of action which was the subject of the Commission's response dated January 31, 1978. Based upon that response, we have consulted with the Company, and the Company has decided to modify its proposed program and resubmit the matter for the Commission's advice. Accordingly, we hereby incorporate the materials which we previously submitted for the Commission's consideration in connection with the response of January 31, 1978, and request the Commission's advice on that proposed course of action, as modified by this letter.

Under the program as originally proposed, a dealer would have been denied special pricing if the dealer proposed to bid Herman Miller products for a portion of the bid items and competing brands for other bid items in situations where the bid solicitation identified the products to be bid by descriptive specifications rather than brand names. The Company now proposes to delete that feature from its proposed program so that dealers would be entitled to mix their bids by bidding Herman Miller products for some items and competing brands for other items. In all other respects, the proposed program would remain the same as that described in our prior communications to the Commission which were the basis for the Commission's response of January 31, 1978.

Based upon our review of the Commission's prior advice and a subsequent discussion with the Commission's Staff, we believe that the program in its modified form will be acceptable, and we respectfully request the Commission's advice as whether the proposed course of action will, if pursued by the Company, constitute compliance with the Commission's outstanding Order. We are hopeful that the Commission will give this request expedited treatment in view of the fact that the request is based on a subject which was recently considered by the Commission and its Staff. Of course, we will be happy to supply any additional information or clarification as the Staff deems necessary. Thank you for your consideration.

Yours very truly,
VARNUM, RIDDERING, WIERENGO
& CHRISTENSON
/s/ J. Terry Moran

Prohibition of proposed course of action whereby automobile dealers entering into service contracts with vehicle purchasers at the time of sale seek to limit the duration of implied warranties therein. [*File No. 793 7001, Rain, Harrell, Emery, Young and Doke, November 30, 1978*] (pub 43 FR 57244, Dec. 7, 1978)

Opinion Letter

November 30, 1978

Dear Mrs. Stevenson:

This is in response to your letters of October 4th and 18th, 1978 requesting an advisory opinion as to whether Section 108 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2308, would prohibit a proposed course of action for your clients. Your clients, automobile dealers who enter into service contracts with vehicle purchasers at the time of sale, propose to limit the duration of implied warranties to the duration of the service contract.

Section 108(a) of the Act flatly prohibits any modification of implied warranties by a supplier when a full warranty is offered or a service contract is entered into. This section states:

No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

Section 108(b) of the Act creates an exception to the general rule in Section 108(a) in the following manner:

For purposes of the title (other than section 104(a)(2)), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

The exception in Section 108(b) does not refer, however, to service contracts or provide for the limitation of implied warranties in service contracts. In fact, the provision specifically requires that any permitted limitation of implied warranties be "prominently displayed *on the face of the warranty*" (emphasis added). Had Congress intended the exception to apply to service contracts as well, Section 108(b) would read ". . . prominently displayed on the face of the warranty or service contract." Further, there is no other section of

the Act that could be interpreted to allow the course of action you have proposed.

Section 108(b) would thus not except the proposed course of action from the general prohibition against disclaimer or limitation of implied warranties in Section 108(a) of the Act.

By direction of the Commission.

Supplemental Request Letter

October 18, 1978

Dear Mr. Thomas:

Earlier this month I submitted a request for a formal Commission Advisory Opinion under the Magnuson-Moss Warranty Act (the "Act"). The question was whether Section 108 of the Act would allow an automobile dealer to limit the duration of implied warranties when a service contract is entered into at the time the vehicle is sold.

Mr. Jeffrey Karp of your office has asked me whether our clients are offering any type of warranties in connection with the sale of the vehicle and the service contract. I did not include this information in my earlier letter since it was my understanding that the Commission believed that the sale of a service contract precluded the limitation of the duration of implied warranties regardless of what type of written warranty was offered.

Our clients inform me that the person who buys the car receives the usual manufacturer's warranty and does not receive any type of warranty, either full or limited, from the dealer selling the vehicle and service contract.

I understand that in this case the Commission feels it is "clear on the face of the statute" that no limitation may be made on the duration of an implied warranty. More specifically, the Commission states that such a limitation may be made only if the supplier offers *only* a limited warranty and does not offer a service contract as well. Although a statement to that effect does appear in the 1974 House Committee Report, there is nothing in the statute itself which even arguably supports this position. Indeed, the words "only" and "limited warranty" do not even appear in the text of Section 108 as it was finally adopted.

We again renew our request for a formal Commission Advisory Opinion on this matter.

Thank you for your consideration.

Very truly yours,

/s/ Cathleen Chandler Stevenson

(Mrs.) Cathleen Chandler Stevenson

Letter of Request

October 4, 1978

Dear Mr. Tobin:

Pursuant to the Federal Trade Commission Rules of Practice, I am writing to request a formal Commission Advisory Opinion under the Magnuson-Moss Warranty Act (the "Act").

We represent several automobile dealers who offer an extended service contract to persons purchasing new or used automobiles. These extended service contracts are purchased at the time the vehicle is sold. It is our understanding that the Commission's present interpretation of Section 108 of the Act precludes the limitation of the duration of implied warranties when a service contract is entered into at the time of the sale. Accordingly, we have so advised our clients, and they are presently not limiting the duration of implied warranties when a service contract is entered into at the time the vehicle is sold. To the best of our knowledge, none of these automobile dealers is currently the subject of any type of investigation by your office.

Our clients have inquired if they may limit the duration of implied warranties to the duration of the extended service contract. We have advised them to refrain from this course of action until we have received an Advisory Opinion from the Commission.

This question has already been the subject of several letters from the Commission Staff. Mr. Alan Rubin and Mr. Jeffrey Carp of the Bureau of Consumer Protection each drafted a response to this question when it was raised initially by the National Automobile Dealers Association (the "NASD"). An extensive brief on the issue was filed with the Commission by the NASD on April 3, 1978.

From my review of the Commission's previous letter, it is my understanding that the Commission interprets subsection (b) of Section 108 of the Act as permitting limitations on implied warranties when the only agreement offered by the supplier is a limited warranty. However, the text of subsection (b) does not specify that it applies solely in cases where the supplier offers only a limited warranty. Moreover, such interpretation would effectively read out the "except as provided in subsection (b)" exception clause in the general rule of subsection (a).

Last week I attended a seminar in Dallas and visited with Mr. Christian S. White, Assistant to the Chairman, about the procedure for requesting this Advisory Opinion. Mr. White advised me that it would not be necessary for me to file a memorandum or brief along with this request. However, please feel free to contact me if you should desire any additional information.

Thank you for your consideration.

Very truly yours,
/s/ Cathleen Chandler Stevenson
(Mrs.) Cathleen Chandler Stevenson