

Complaint

101 F.T.C.

IN THE MATTER OF
CHAMPION HOME BUILDERS CO.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9151. Complaint, Feb. 5, 1981—Decision, Feb. 17, 1983

This consent order requires a Drydon, Mich. manufacturer and seller of solar energy equipment, among other things, to cease making false or unsubstantiated representations concerning the performance, durability, quality and maintenance requirements of its solar energy equipment. Also prohibited are unsubstantiated claims concerning the energy- and money-savings potential realized from use of such equipment. The order requires the company to contact all purchasers of its equipment and inform them that the company is offering cash settlements to eligible persons. Those accepting the cash settlement would waive any legal claims they may have against the company, and any rights to receive service or repairs under the manufacturer's warranty. Additionally, the company must send a warning package to all purchasers of its equipment, notifying them of precautions that should be taken to minimize any potential for fire in Champion-manufactured solar energy equipment.

Appearances

For the Commission: *Marilyn J. Holmes, Joel Winston, T. Bringier McConnell, Anne V. Maher, Lewis Morris and Michael Dershowitz.*

For the respondent: From *Dykema, Gossett, Spencer, Goodnow & Trigg, Howard E. O'Leary*, Washington, D.C. and *Fred Woodworth*, Detroit, Mich.

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 Champion Home Builders Co., a corporation, hereinafter sometimes 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. For the purposes of this complaint, *solar energy equipment* shall mean any device or piece of equipment designed to collect and store heat from the sun's rays and transfer the heat for use in heating water or air space indoors, or any component thereof,

manufactured, sold or distributed by respondent, including the "Solar Furnace."

PAR. 2. Respondent Champion Home Builders Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 5573 E. North Street, Dryden, Michigan.

PAR. 3. Respondent has been engaged in the manufacture, offering for sale, sale, and distribution of solar energy equipment. Respondent has operated through distributors and dealers in more than 30 states.

PAR. 4. In the course and conduct of its business, respondent has caused the said solar energy equipment, when sold, to be transported from manufacturing plants located in various States of the United States to dealers and distributors thereof located in various other States of the United States. In the further course and conduct of its business, respondent has disseminated and caused to be disseminated by its dealers and distributors advertisements, promotional literature, and other written materials concerning respondent's solar energy equipment by various means, including the insertion of advertisements in magazines with national circulation and the distribution of promotional materials to consumers, for the purpose of inducing and in a manner likely to induce, directly or indirectly, the purchase of said products in commerce. Respondent at all times mentioned herein has maintained a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business respondent has, directly or by implication, through advertisements, promotional literature or other written materials, made representations as to the performance, durability, reliability, and quality of its solar energy equipment. Typical and illustrative of these statements and representations, but not all-inclusive thereof, are the following:

Respondent's Solar Furnace "should work automatically with little or no maintenance;"

Respondent's Solar Furnace is "virtually maintenance free;"

* * * * *

Respondent's Solar Furnace is built "with quality longlife materials;"

* * * * *

Respondent's Solar Furnace collector is built of "high temperature

materials" and can withstand temperatures "up to 375° F." without damage;

* * * * *

Consumers "can have confidence in the Solar Furnace built and backed by Champion Home Builders Company! . . .—60 Factories from Coast to Coast!—22-Year Record of High Quality Mass-Production!—3,200 Dealers Nationwide to Provide Prompt Service!;"

Respondent's Solar Furnace is "backed by a national network of trained dealers;"

* * * * *

Respondent's Solar Furnace has been "independently tested—3rd party verification tests [were] completed by two professional engineering firms;" and

Respondent's Solar Furnace "has been completely tested by two independent third-party engineering firms—Midwest Engineering and Barber Nichols, both of Denver, Colorado."

PAR. 6. Through the use of the statements and representations set forth in Paragraph Five, respondent has represented directly or by implication that:

(1) Respondent's Solar Furnace does not have any defect which substantially impairs the reliability, durability, or performance of the Solar Furnace;

(2) Little or no maintenance is required to keep Solar Furnaces in operating condition;

(3) All Solar Furnaces and the materials and components therein are durable and reliable;

(4) Respondent's Solar Furnace collector is not adversely affected by high temperatures;

(5) Respondent has 60 factories producing solar energy equipment, has a 22-year record of mass producing high-quality solar energy equipment, and has 3,200 trained dealers nationwide to provide prompt service on its solar energy equipment; and

(6) Competent, independently-conducted tests have verified the performance or quality of respondent's Solar Furnaces.

PAR. 7. In truth and in fact:

(1) Respondent's Solar Furnace suffers or may suffer from one or

more defects, including but not limited to controller malfunctions, foam insulation expansion, and wood frame outgassing, which substantially impair or may substantially impair the reliability, durability, or performance of the Solar Furnace;

(2) Respondent's Solar Furnace and the components thereof experience a high rate of failure and require extensive maintenance and repairs on a regular and continuing basis;

(3) Several of the materials and component parts in respondent's Solar Furnace are not durable or reliable;

(4) Respondent's Solar Furnace collector is adversely affected by high temperatures;

(5) Respondent does not have and has never had 60 factories producing solar energy equipment; does not have and has never had a 22-year record of mass producing high-quality solar energy equipment; does not have and has never had 3,200 trained dealers nationwide to service its solar energy equipment; and

(6) The performance or quality of respondent's Solar Furnace has not been verified by competent, independently conducted tests.

Therefore, the statements and representations set forth in Paragraphs Five and Six were and are false, misleading, or deceptive.

PAR. 8. In the course and conduct of its business, respondent has, directly or by implication, through advertisements and other promotional materials, made representations as to the thermal performance and cost recovery or "payback" potential of its solar energy equipment. Typical and illustrative of these statements and representations, but not all-inclusive thereof, are the following:

Respondent's Solar Furnace "has been shown to replace 45% to 90% of annual home fuel needs of any present forced-air heating system when used in conjunction with" respondent's "Solar Insulation Package;"

Respondent's Solar Furnace "provides 45% to 90% of your heat;"

* * * * *

Respondent's model 96 Solar Furnace will supply a projected 56 to 76 percent of the fuel requirements of a 5,000 degree day house in Washington, D.C.;

Respondent's Solar Furnace has an "estimated percentage capability" of providing 72 percent "of average heating requirements for the 270 day heating season" for a 1,000 square foot, 5,000 degree day house in Washington, D.C.;

Complaint

101 F.T.C.

* * * * *

Respondent's model 96 Solar Furnace, "installed on a solar insulated 1,000 square foot home in Dover, Delaware," will pay for itself in eight years;

* * * * *

"Dollar for dollar, Btu for Btu," respondent's Solar Furnace "is the best solar heating system available today;"

Respondent's Solar Furnace "is an investment in real property, a home improvement which has a tendency to become worth more and more;" and

Respondent's Solar Furnace tends "to go up in value year by year."

PAR. 9. At the time the representations and statements set forth in Paragraph Eight were made, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representations set forth in Paragraph Eight were and are deceptive, misleading, or unfair.

PAR. 10. The advertisements and promotional materials referred to in Paragraph Eight represent, directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations alleged in Paragraph Eight. In truth and in fact, respondent had no reasonable basis for such representations. Therefore, the representations set forth in Paragraph Eight were and are deceptive, misleading, or unfair.

PAR. 11. A significant number of Solar Furnaces are subject to or potentially subject to one or more conditions which are costly to correct or may significantly affect the quality, reliability, durability or performance of the Solar Furnaces. Such conditions include but are not limited to controller malfunctions, motor malfunctions, foam insulation expansion and air leakage, and wood frame outgassing. Respondent knew or should have known and failed to disclose to purchasers of Solar Furnaces facts which relate to the existence, nature and extent of these conditions. Respondent's failure to disclose these material facts which, if known to prospective purchasers, would have been likely to affect their purchasing decisions, was and is deceptive or unfair.

PAR. 12. The use by respondent of the aforesaid false, misleading, unfair, or deceptive statements, representations, acts, and practices, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid

false, misleading, unfair, or deceptive statements, representations, acts, and practices, have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations are true and complete, and to induce a substantial number of such persons to purchase from respondent said solar energy equipment by reason of said erroneous and mistaken belief.

PAR. 13. The acts and practices of respondent as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(f) of its Rules; and

Respondent and complaint counsel having thereafter submitted modifications to the consent agreement by letter dated January 14, 1983;

Now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Champion Home Builders Co. is a corporation orga-

nized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 5573 East North Street, in the City of Dryden, State of Michigan.

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

ORDER

For purposes of this Order, the following definitions shall apply:

(1) *Solar energy equipment* shall mean all space heating or cooling or water heating equipment utilizing energy from the sun, including but not limited to Solar Furnaces and solar collectors manufactured by respondent, whether sold under the Champion brand name or another brand name.

(2) *Solar Furnace* shall mean the solar heating equipment manufactured by respondent between approximately 1976 and 1979, consisting of a self-contained A-frame structure with a collector and storage compartment, including but not limited to equipment designated by respondent, or possessing the same design and physical characteristics as equipment designated by respondent, as models 96, 128, 160, 1500, 2000, and 2500, whether sold under the Champion brand name or another brand name.

(3) *Solar collector* shall mean the solar heating equipment manufactured by respondent between approximately 1976 and 1979, consisting of a glass-covered box with a dark absorber surface over which air can pass, including but not limited to the product marketed under the name "Champion Vertafin Collector."

(4) *Solar collector system* shall mean each distinct system of solar collector(s), air handlers, and controls.

(5) As used in this Order, the requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting orally, visually, in writing, or in any other manner, directly or by implication.

(6) *Competent and reliable scientific test* shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

(7) *Purchaser* shall mean any person who purchased a Solar Furnace or solar collector for his or her own use as heating equipment or as a demonstrator, and who did not sell any Solar Furnace or solar

collector (except for second-hand resale of the Solar Furnace or solar collector purchased by such person for his or her own use). This term shall include any dealer as defined below who did not sell any Solar Furnace or solar collector (except for second-hand resale of the Solar Furnace or solar collector purchased by such dealer for his or her own use).

(8) *Dealer* shall mean any person authorized by respondent, by a distributor of respondent, or by a licensee or a distributor of a licensee of International Solarthermics Corporation, to sell Solar Furnaces or solar collectors to purchasers.

(9) *Eligible direct purchaser* shall mean any purchaser who purchased a Champion brand name Solar Furnace or solar collector, as new. This term shall not include any purchaser who, prior to April 1, 1982, waived all claims with respect to the Solar Furnace or solar collector in exchange for monetary compensation, or who received a judgment in a court of law for monetary damages or for a full or partial refund of the purchase price in an action against respondent with respect to the Solar Furnace or solar collector.

(10) *Eligible direct dealer* shall mean any dealer who purchased a Champion brand name Solar Furnace or solar collector, as new, for his or her own use as heating equipment or as a demonstrator, and who sold at least one but less than three Solar Furnaces and solar collectors to purchasers. This term shall not include any dealer who, prior to April 1, 1982, waived all claims with respect to the Solar Furnace or solar collector in exchange for monetary compensation, or who received a judgment in a court of law for monetary damages or for a full or partial refund of the purchase price in an action against respondent with respect to the Solar Furnace or solar collector.

(11) *Eligible licensee purchaser* shall mean any purchaser who purchased a Solar Furnace or solar collector of a brand name other than Champion, as new. This term shall not include any purchaser who, prior to April 1, 1982, waived all claims with respect to the Solar Furnace or solar collector in exchange for monetary compensation, or who received a judgment in a court of law for monetary damages or for a full or partial refund of the purchase price in an action against respondent with respect to the Solar Furnace or solar collector.

PART I

It is ordered, That respondent Champion Home Builders Co., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar energy

equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in any manner that:

(1) Respondent's solar energy equipment does not have any defect which substantially impairs the reliability, durability, or performance of the equipment;

(2) Little or no maintenance is required to keep respondent's solar energy equipment in operating condition;

(3) Respondent's solar energy equipment, or any material or component thereof, is durable or reliable;

(4) Respondent's solar energy equipment, or any material or component thereof, is not adversely affected by high temperatures;

(5) Respondent has 60 factories producing solar energy equipment, has a 22-year record of mass producing solar energy equipment, or has 3,200 trained dealers nationwide to provide prompt service on its solar energy equipment; or

(6) Competent, independently conducted tests have verified the performance or quality of respondent's solar energy equipment;

unless such representation is true, and unless, at the time that the representation is made, respondent possesses and relies upon a competent and reliable scientific test or other objective material which substantiates the representation.

B. Representing in any manner the thermal or economic performance or efficiency, energy savings, heat output, cost recovery, "pay-back" potential, or investment potential of respondent's solar energy equipment unless such representation is true, and unless, at the time that the representation is made, respondent possesses and relies upon a competent and reliable scientific test or other objective material which substantiates the representation.

C. Misrepresenting in any manner:

(1) The reliability, durability, performance capabilities, or maintenance requirements of respondent's solar energy equipment;

(2) The production capabilities, manufacturing experience, or service capabilities of respondent relating to solar energy equipment; or

(3) The results or conclusions of any test upon which respondent relies to substantiate any representation relating to solar energy equipment.

PART II

It is further ordered, That respondent shall:

A. Within 45 days after the date of service of this Order, determine the names and last known addresses of all purchasers and the names and last known addresses of all dealers. In making these determinations, respondent shall search all relevant records in its possession, custody, or control, and shall obtain and search all relevant service and repair records maintained by International Solar Technologies, Inc. as of the date of service of this Order.

B. Send by first-class mail, address correction requested, within 45 days after the date of service of this Order, to the last known address of each purchaser and dealer identified by respondent pursuant to Subpart A of this Part or identified by the Federal Trade Commission or its staff, a notice package consisting of: (i) a copy of the letter attached to this Order as Attachment A, incorporated herein by reference, with the return date filled in; (ii) a copy of the questionnaire form attached to this Order as Attachment B, incorporated herein by reference, with the return date filled in; (iii) a self-addressed, postage-paid envelope; and (iv) an envelope containing the materials described in subsections (i) through (iii) and bearing the legend "CHAMPION SOLAR PROGRAM, IMPORTANT CASH SETTLEMENT OFFER." For the purposes of this Subpart, the return date shall be the date 90 days after the date of service of this Order.

Respondent shall also send by first-class mail a notice package to each person who, within 85 days after the date of service of this Order, contacts respondent or about whom respondent receives information indicating that the person may be a purchaser or dealer, and who has not received a notice package or received a notice package but subsequently lost it. The notice package shall be sent within five days after respondent's receipt of the contact or information.

Provided that respondent may refrain from sending a notice package to any person identified pursuant to Subparts A or B of this Part who respondent's records conclusively show is not an eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser.

C. Determine all eligible direct purchasers, eligible direct dealers, and eligible licensee purchasers. These determinations shall be based upon all information received by respondent from returned Attachment B questionnaires, and all other information in respondent's possession, as of the date 105 days after the date of service of this Order.

Provided that respondent may determine that a person is or is not an eligible direct purchaser, eligible direct dealer, or eligible licensee

purchaser notwithstanding the information provided by such person in an Attachment B form if respondent's records conclusively show that the person does or does not meet the definition of eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser as set forth in Definitions (9), (10), and (11) of this Order.

D. Determine a tentative cash settlement amount for each eligible direct purchaser and eligible direct dealer identified pursuant to Subpart C of this Part. The tentative cash settlement amounts shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector and shall consist of the following:

(1) \$1500 for each Solar Furnace or solar collector system purchased by an eligible direct purchaser who currently owns the unit(s) or who disposed of the unit(s) not for value;

(2) \$1000 for each Solar Furnace or solar collector system purchased by an eligible direct purchaser and subsequently disposed of for value; and

(3) \$750 for each Solar Furnace or solar collector system purchased by an eligible direct dealer which was purchased for the dealer's own use, either as heating equipment or as a demonstrator.

Provided that if the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) through (3) of this Subpart exceeds \$375,000, then each tentative cash settlement shall be prorated by multiplying the tentative cash settlement amount by the ratio of \$375,000 to the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) through (3).

E. Determine a tentative cash settlement amount for each eligible licensee purchaser identified pursuant to Subpart C of this Part. The tentative cash settlement amounts shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector and shall consist of the following:

(1) \$750 for each Solar Furnace or solar collector system purchased by an eligible licensee purchaser who currently owns the unit(s) or who disposed of the unit(s) not for value; and

(2) \$500 for each Solar Furnace or solar collector system purchased by an eligible licensee purchaser and subsequently disposed of for value.

Provided that if the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) and (2) of this Subpart exceeds \$150,000 plus any remaining portion of the \$375,000 amount provided in Subpart D, then each tentative cash settlement shall be prorated by multiplying the tentative cash settlement

amount by the ratio of \$150,000 plus any remaining portion of the \$375,000 amount to the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) and (2).

F. Send by first-class mail, within 125 days after the date of service of this Order, to each eligible direct purchaser, eligible direct dealer, and eligible licensee purchaser who is determined pursuant to Subpart C of this Part: (i) a copy of the letter attached to this Order as Attachment C, incorporated herein by reference, with the tentative cash settlement amount and the return date filled in; (ii) a copy of the acceptance and waiver form attached to this Order as Attachment D, incorporated herein by reference, with the tentative cash settlement amount, the return date, and the date of the Attachment C letter filled in; and (iii) a self-addressed, postage-paid envelope. The tentative cash settlement amount shall be determined as provided in Subparts D and E of this Part. For the purposes of this Subpart, the return date shall be the date 155 days after the date of service of this Order.

G. Send by first-class mail, within 180 days after the date of service of this Order, a cash settlement check to each eligible direct purchaser and eligible direct dealer who returned to respondent a signed Attachment D form which was received by respondent on or before the date 170 days after the date of service of this Order. Each cash settlement shall be in the amount determined as provided in Subpart D, subsections (1) through (3) of this Part, and shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector.

Provided that if the aggregate dollar value of all cash settlements as determined above exceeds \$375,000, then each cash settlement shall be prorated by multiplying the cash settlement amount by the ratio of \$375,000 to the aggregate dollar value of all cash settlements as determined above.

H. Send by first-class mail, within 240 days after the date of service of this Order, a cash settlement check to each eligible licensee purchaser who returned to respondent a signed Attachment D form which was received by respondent on or before the date 170 days after the date of service of this Order. Each cash settlement shall be in the amount determined as provided in Subpart E, subsections (1) and (2) of this Part, and shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector.

Provided that if the aggregate dollar value of all cash settlements as determined above exceeds \$150,000 plus any undistributed portion of the \$375,000 fund provided in Subpart G of this Part, then each cash settlement shall be prorated by multiplying the cash settlement amount by the ratio of \$150,000 plus any undistributed portion of the

\$375,000 fund to the aggregate value of all cash settlements as determined above.

I. Send by first-class mail to each person who, within 86 to 270 days after the date of service of this Order, contacts respondent or about whom respondent receives information indicating that the person may be a purchaser or dealer, and who has not received a notice package as provided in Subpart B or who received a notice package as provided in Subpart B but subsequently lost it, a notice package consisting of: (i) a copy of the letter attached to this Order as Attachment E, incorporated herein by reference, with the return date filled in; (ii) a copy of Attachment B, with the return date filled in; (iii) a self-addressed, postage-paid envelope; and (iv) an envelope containing the materials described in subsections (i) through (iii) and bearing the legend "CHAMPION SOLAR PROGRAM, IMPORTANT CASH SETTLEMENT OFFER." For the purposes of this Subpart, the return date shall be the date 275 days after the date of service of this Order. The notice package shall be sent within five days after respondent's receipt of the contact or information.

Provided that respondent may refrain from sending a notice package to any person who respondent's records conclusively show is not an eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser.

J. Determine all additional eligible direct purchasers, eligible direct dealers, and eligible licensee purchasers. These persons shall include (i) persons whose Attachment B forms were received by respondent subsequent to the date 105 days after the date of service of this Order, and (ii) persons whose Attachment D forms were received by respondent subsequent to the date 170 days after the date of service of this Order. The determinations shall be based upon all information received by respondent from returned Attachment B questionnaires, and all other information in respondent's possession, as of the date 290 days after the date of service of this Order.

Provided that respondent may determine that a person is or is not an eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser notwithstanding the information provided by such person in an Attachment B form if respondent's records conclusively show that the person does or does not meet the definition of eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser as set forth in Definitions (9), (10), and (11) of this Order.

K. Determine a tentative cash settlement amount for each eligible direct purchaser, eligible direct dealer, and eligible licensee purchaser identified pursuant to Subpart J of this Part. The tentative cash settlement amounts shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector

and shall consist of those amounts specified in Subpart D, subsections (1) through (3) and Subpart E, subsections (1) and (2) of this Part.

Provided that if the aggregate dollar value of all tentative cash settlements determined above exceeds \$25,000 plus any undistributed portion of the \$375,000 and \$150,000 funds provided in Subparts G and H of this Part, then each tentative cash settlement shall be prorated by multiplying the tentative cash settlement amount by the ratio of \$25,000 plus any undistributed portion of the \$375,000 and \$150,000 funds to the aggregate value of all cash settlements as determined above.

L. Send by first-class mail, within 310 days after the date of service of this Order, to each eligible direct purchaser, eligible direct dealer and eligible licensee purchaser who is determined pursuant to Subpart J(i) of this Part: (i) a copy of Attachment C, with the tentative cash settlement amount and the return date filled in; (ii) a copy of Attachment D, with the tentative cash settlement amount, the return date, and the date of the Attachment C letter filled in; and (iii) a self-addressed, postage-paid envelope. The tentative cash settlement amount shall be determined as provided in Subpart K of this Part. For the purposes of this Subpart, the return date shall be the date 340 days after the date of service of this Order.

M. Send by first-class mail, within 310 days after the date of service of this Order, to each eligible direct purchaser, eligible direct dealer and eligible licensee purchaser who is determined pursuant to Subpart J(ii) of this Part and whose new tentative cash settlement amount is less than the tentative cash settlement amount previously determined for that person pursuant to Subpart D or E of this Part: (i) a copy of the letter attached to this Order as Attachment F, incorporated herein by reference, with the new tentative cash settlement amount and the return date filled in; (ii) a copy of Attachment D, with the new tentative cash settlement amount, the return date, and the date of the Attachment F letter filled in; and (iii) a self-addressed, postage-paid envelope. The new tentative cash settlement amount shall be determined as provided in Subpart K of this part. For the purposes of this Subpart, the return date shall be the date 340 days after the date of service of this Order.

N. Send by first-class mail, within 365 days after the date of service of this Order, a cash settlement check to each eligible direct purchaser, eligible direct dealer, and eligible licensee purchaser who did not receive a cash settlement check as provided in Subparts I and J, and who returned to respondent a signed Attachment D form which was received by respondent on or before the date 355 days after the date of service of this Order. Each cash settlement shall be in the amount determined as provided in Subpart D, subsections (1) through (3) and

Subpart E, subsections (1) and (2) of this Part, and shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector.

Provided that if the aggregate dollar value of all cash settlements as determined above exceeds \$25,000 plus any undistributed portion of the \$375,000 and \$150,000 funds provided in Subparts G and H of this Part, then each cash settlement shall be prorated by multiplying the cash settlement amount by the ratio of \$25,000 plus any undistributed portion of the \$375,000 and \$150,000 funds to the aggregate value of all cash settlements as determined above.

O. Send by first-class mail a copy of the letter attached to this Order as Attachment G, incorporated herein by reference, with the appropriate box checked, to each person who is determined to be ineligible for a cash settlement under the provisions of this Order or whose Attachment D form was not received by respondent on or before the date 355 days after the date of service of this Order. The copy of Attachment G shall be sent within ten days after the determination of ineligibility is made or the Attachment D form is received by respondent.

P. Use all reasonable efforts to determine the correct and complete name and last known address of a purchaser or dealer in each instance where the records searched by respondent do not provide correct or complete information, and use all reasonable efforts to determine the correct eligibility and status of a person in each instance where the returned Attachment B form contains insufficient, ambiguous, or conflicting information. Such efforts shall include, but not be limited to, searches of respondent's records and requests for additional information by mail or telephone calls.

Q. In each instance where a letter or notice package provided for by Part II of this Order is returned by the Post Office undelivered and respondent is provided with a corrected address, remail the letter or notice package to the corrected address within five days after respondent's receipt of the corrected address from the Post Office.

R. Establish and maintain a telephone number which persons may call to receive information and materials relating to the programs provided in this Part and in Part III of this Order.

PART III

It is further ordered, That respondent shall:

A. Within 45 days after the date of service of this Order, determine the names and original addresses of all persons who purchased Solar Furnaces or solar collectors, including purchasers, dealers, distribu-

tors of respondent, licensees of International Solarthermics Corporation, and distributors of licensees of International Solarthermics Corporation. In making these determinations, respondent shall search all relevant records in its possession, custody, or control.

B. Send by third-class mail, within 45 days after the date of service of this Order, to the original address of each person who purchased a Solar Furnace or solar collector identified by respondent pursuant to Subpart A of this Part or identified by the Federal Trade Commission or its staff, a warning package consisting of: (i) a copy of the letter attached to this Order as Attachment H, incorporated herein by reference; (ii) two copies of the sign attached to this Order as Attachment I, incorporated herein by reference, consisting of a white self-adhesive label of latex impregnated material, no smaller than four inches by six inches, with the first line printed in red in thirty-six point type and the second line printed in red in twenty-four point type; and (iii) an envelope containing the materials described in subsections (i) and (ii) bearing the legend "IMPORTANT SOLAR EQUIPMENT WARNING" and addressed as follows: "(Name of Person) or Current Resident."

Respondent shall also send by first-class mail a warning package to each person who, within 365 days after the date of service of this Order, contacts respondent or about whom respondent receives information indicating that the person may be a current owner of a Solar Furnace or solar collector, and who has not received a warning package or who received a warning package but subsequently lost it. The warning package shall be sent within five days after respondent's receipt of the contact or information.

Provided that respondent shall substitute on the envelope containing copies of Attachments H and I the name of the current owner of the Solar Furnace or solar collector for the name of the person who purchased the Solar Furnace or solar collector, if respondent's records show that the person who purchased the Solar Furnace or solar collector no longer owns the unit and if respondent's records contain the name of the current owner.

Provided that respondent may refrain from sending a warning package to any person identified pursuant to Subpart A of this Part who respondent's records conclusively show is not a current owner of a Solar Furnace or solar collector.

C. Use all reasonable efforts to determine the correct and complete name and original address of a person who purchased or owns a Solar Furnace or solar collector in each instance where the records searched by respondent do not provide correct or complete information. Such efforts shall include, but not be limited to, searches of

respondent's records and requests for additional information by mail or telephone calls.

PART IV

It is further ordered, That:

A. Respondent shall maintain documents and records demonstrating the manner and form of respondent's compliance with Part I of this Order, including:

(1) Documentation in support of and upon which respondent relies in making any representation concerning the reliability, durability or performance of solar energy equipment, and any other documentation which contradicts, qualifies, or otherwise calls into question any representation concerning the reliability, durability or performance of solar energy equipment, included in advertising or sales promotional materials disseminated by respondent or by any officer, representative, agent, employee, subsidiary, or division of respondent;

(2) Documentation or written results of tests performed in connection with carrying out the provisions of Part I, Subparts A and B of this Order.

Such documentation shall be retained by respondent for a period of three (3) years from the date such advertising or sales promotional materials were last disseminated, and may be inspected by the Commission or its staff upon reasonable notice.

B. Respondent shall maintain documents and records demonstrating the manner and form of respondent's compliance with Parts II and III of this Order, including but not limited to those reflecting:

(1) Efforts made and actions taken by respondent to identify, locate, contact, and provide cash settlements to persons as provided in Part II of this Order;

(2) Efforts made and actions taken by respondent to identify, locate and mail notices to addresses and persons as provided in Part III of this Order;

(3) The names, original addresses, and last known addresses of all persons required to be determined as provided in Part II, Subparts A and P and Part III, Subparts A and C of this Order;

(4) The name and address of each person to whom a notice package is sent as provided in Part II, Subparts B and I of this Order;

(5) The name and address of each person who is determined to be eligible and each person who is determined to be ineligible for a cash settlement as provided in Part II, Subparts B, C, I and J of this Order;

(6) The name and address of each person who receives a cash settle-

ment as provided in Part II, Subparts G, H and N of this Order, and the amount of each refund;

(7) The Attachment B and Attachment D forms returned to respondent as provided in Part II, Subparts C, G, H, J and N of this Order;

(8) Any information used in making determinations of eligibility and ineligibility as provided in Part II of this Order;

(9) The name and address of each person who disputes a determination of ineligibility or cash settlement amount made as provided in Part II of this Order, the nature of such person's dispute, and the resolution of the dispute;

(10) All written communications, and a log of all telephonic communications which includes a summary of the communications, between respondent and any person relating to the programs provided in Parts II and III of this Order;

(11) The name and address of each person to whom an Attachment H letter is sent as provided in Part III of this Order.

Such documents and records shall be maintained by respondent for a period of three (3) years from the date of the creation of the document or record, and may be inspected by the Commission or its staff upon reasonable notice.

PART V

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions, to its successors and assigns, and to each of its officers, agents, representatives, or employees who have sales, marketing, advertising, servicing, warranty, or policy responsibilities with respect to the subject matter of this Order.

PART VI

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

Decision and Order

101 F.T.C.

PART VII

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

ATTACHMENT A

[Champion letterhead]

[Date]

Dear :

Our records show that you may have purchased a Solar Furnace or solar collector manufactured by Champion Home Builders Co. Champion has recently started a program to offer cash settlements of at least several hundred dollars each to certain people who purchased solar energy equipment sold under the "Champion" and other brand names. You may be eligible for a cash settlement under this program. Please read this letter and follow the steps listed below.

This program is part of an agreement between the Federal Trade Commission (FTC) and Champion. The FTC had alleged that Champion's Solar Furnaces and solar collectors did not provide as much heat as represented and required a great deal of maintenance and repairs. Although Champion does not admit this is true, we have agreed to offer these cash settlements.

HOW TO APPLY

In order to apply for a cash settlement, you *must* do the following:

- (1) Fill out the enclosed questionnaire completely. This will be used to determine your eligibility for the cash settlement.
- (2) If you owned more than one Solar Furnace or solar collector system, make extra copies of the questionnaire and fill out one for each Solar Furnace or solar collector system you owned.
- (3) Return the completed questionnaire to us in the enclosed envelope. You must mail the questionnaire back to us by [return date] to make sure you are considered for the full settlement for which you may be eligible. If you are eligible for a cash settlement but we do not receive your completed questionnaire in time, you may get a lesser amount or you may get nothing.

Even if you no longer own the Solar Furnace or solar collector, or you were a dealer, or you bought a non-Champion brand, you may still be eligible for a cash settlement. Please fill out the questionnaire so that you may be considered.

HOW TO OBTAIN YOUR CASH SETTLEMENT

Once we receive your completed questionnaire, we will determine if you are eligible for a cash settlement and let you know in writing within the next three months. If you are eligible, we will also tell you how much the settlement will be. Please let us know if you change your address in the next several months, so we can contact you again.

You will *not* have to return your Solar Furnace or solar collector if you decide to take the cash settlement. However, you *will* have to sign a waiver form which we will send you. By signing the waiver you will give up any rights you may have remaining under

316

Decision and Order

a warranty if you got a warranty from Champion. You will also give up your right to sue Champion for any existing claims you may have relating to your Solar Furnace or solar collector.

If you have any questions about this program, please contact:

Champion Solar Program
c/o Champion Home Builders Co.
5573 E. North Street
Dryden, Michigan 48428

[Telephone number]

Remember: You must mail the completed questionnaire to us by [return date]. Also, please remember to let us know if you change your address.

Sincerely yours,

Champion Home Builders Co.

Enclosures

ATTACHMENT B

QUESTIONNAIRE

Please print your name, address, and telephone number. Then, answer the questions below by putting an "X" in the proper box.

Fill out a separate questionnaire form for each Solar Furnace or solar collector system you have owned. If you were a dealer, fill out a questionnaire form for each Solar Furnace or solar collector system you had for your own use as heating equipment or as a demonstrator.

Name: _____ Telephone: _____

Address: _____

_____ Zip Code: _____

1. Have you or your family ever bought a Solar Furnace or solar collector for your own use as heating equipment or as a demonstrator? (Answer yes if you bought the unit by itself or with your home.)
☐ Yes ☐ No
 If yes, from whom did you buy it?

NOTE: If you answered yes, please answer the following questions. If you answered no, please skip to Question 11.

2. Did you buy the Solar Furnace or solar collector as new?
☐ Yes ☐ No
3. What is the brand name of the Solar Furnace or solar collector?
☐ Champion ☐ Other (please specify): _____
4. If you own or owned a Solar Furnace, does the outside surface look like
☐ Aluminum or metal with a brown wood-grain pattern?
☐ Wood, fiberglass or other non-metallic material?
☐ Other (please specify): _____
5. What is the serial number of your Solar Furnace or solar collector?

NOTE: The serial number should appear on your warranty registration form. If you can't find your serial number, leave this answer blank.

6. Do you still own the Solar Furnace or solar collector?
☐ Yes ☐ No
7. If the answer to question 6 is no, did you:
☐ Sell the unit (either by itself or with your home)?
☐ Dispose of the unit without selling it or receiving any compensation?
- NOTE: If you sold the unit to someone else, please provide the name and address of the buyer: _____

8. Were you ever a dealer for Solar Furnaces?
☐ Yes (please specify brand name of equipment you sold): _____
☐ No

NOTE: If you answered yes, please answer the following questions. If you answered no, please skip to Question 11.

9. Did you buy the Solar Furnace or solar collector described above before you became a Solar Furnace dealer?
☐ Yes ☐ No
10. How many Solar Furnaces and Champion solar collector systems did you sell? (Do not count any units you bought for your own use and later sold second-hand.)
☐ None ☐ One or two ☐ More than two
11. Do you know anyone else who bought a Solar Furnace or Champion solar collector? If so, please provide their names and addresses:

This completes our questions. If you have a copy of your bill of sale, warranty form, or other evidence of purchase, please enclose it with this form in the envelope we have provided. If you do not have anything like this, please return the form anyway. Evidence of purchase is *not* required for you to be eligible for a cash settlement, but will help us in reviewing your eligibility.

REMEMBER: YOU MUST FILL OUT THIS FORM AND MAIL IT TO US BY [return date] TO BE ELIGIBLE FOR A FULL CASH SETTLEMENT.

ATTACHMENT C

[Champion letterhead]

[Date]

Dear :

As part of an agreement with the Federal Trade Commission (FTC), Champion Home Builders Co. is offering cash settlements to certain people who purchased Solar Furnaces and solar collectors manufactured by Champion. We have reviewed our records and the questionnaire that you returned and have determined that you are eligible for a cash settlement under this program.

AMOUNT OF YOUR CASH SETTLEMENT

The tentative amount of your cash settlement is [tentative cash settlement amount]. This amount was determined based on the number of Solar Furnaces or solar collectors you purchased and the circumstances under which you purchased them. The amount

of money you will actually receive may increase slightly if someone who is eligible decides not to accept a settlement, but this amount will *not* be lowered.

HOW TO OBTAIN YOUR CASH SETTLEMENT

In order to obtain your cash settlement, you must sign and return the enclosed form entitled "Notice of Acceptance of Cash Settlement and Waiver of Claims." Please read this form and make your decision carefully. By signing and returning this form and accepting your cash settlement, you give up any rights you may have remaining under a warranty if you got a warranty from Champion. You also give up your right to sue Champion for any existing claims you may have relating to your Solar Furnace or solar collector.

If you decide to accept the cash settlement and give up these rights, please sign the form and return it to us in the enclosed envelope. You *must* mail the signed form back to us by [return date] to make certain you receive your settlement. We will then mail you a check within the next two to four months. If we do not receive your signed form in time, you may get a smaller cash settlement or you may get nothing.

If you decide not to accept the cash settlement, please do not return the form. You will not give up any rights and you will not receive any money.

If you have any questions about this program, or if you change your address, please contact:

Champion Solar Program
c/o Champion Home Builders Co.
5573 E. North Street
Dryden, Michigan 48428

[Telephone number]

Remember: You must mail the signed waiver form to us by [return date].

Sincerely yours,

Champion Home Builders Co.

Enclosures

ATTACHMENT D

NOTICE OF ACCEPTANCE OF CASH SETTLEMENT AND WAIVER OF CLAIMS

I hereby accept Champion's offer of a cash settlement, as contained in its letter of [date of Attachment C or F letter], in an amount not less than [tentative cash settlement amount].

In consideration of this cash settlement, I hereby release and discharge Champion Home Builders Co., its successors and assigns, and its directors, officers, agents, representatives, and employees, and its divisions and other subsidiaries, from any and all claims of every name and nature relating to solar energy equipment manufactured and sold by Champion Home Builders Co., including any claims I may have under any express or implied warranty, including any warranty of merchantability or fitness for particular use, from the beginning of time to the date of this instrument and forever after, except any claims for future personal injury or future property damage relating to the solar energy equipment.

Decision and Order

101 F.T.C.

(Date)

(Signature)

(Name)

(Address)

(City, State and Zip Code)

REMEMBER: YOU MUST SIGN THIS FORM AND MAIL IT TO US BY [return date].

ATTACHMENT E

[Champion letterhead]

[Date]

Dear :

Our records show that you may have purchased a Solar Furnace or solar collector manufactured by Champion Home Builders Co. Champion has recently started a program to offer cash settlements of at least several hundred dollars each to certain people who purchased solar energy equipment sold under the "Champion" and other brand names. You may be eligible for a cash settlement under this program. Please read this letter and follow the steps listed below.

This program is part of an agreement between the Federal Trade Commission (FTC) and Champion. The FTC had alleged that Champion's Solar Furnaces and solar collectors did not provide as much heat as represented and required a great deal of maintenance and repairs. Although Champion does not admit this is true, we have agreed to offer these cash settlements.

HOW TO APPLY

In order to apply for a cash settlement, you *must* do the following:

- (1) Fill out the enclosed questionnaire completely. This will be used to determine your eligibility for the cash settlement.
- (2) If you owned more than one Solar Furnace or solar collector system, make extra copies of the questionnaire and fill out one for each Solar Furnace or solar collector system you owned.
- (3) Return the completed questionnaire to us in the enclosed envelope. You must mail the questionnaire back to us by [return date] to make sure you are considered for the full cash settlement for which you may be eligible. If you are eligible for a cash settlement but we do not receive your completed questionnaire in time, you will receive no cash settlement.

Even if you no longer own the Solar Furnace or solar collector, or you were a dealer, or you bought a non-Champion brand, you may still be eligible for a cash settlement. Please fill out the questionnaire so that you may be considered.

HOW TO OBTAIN YOUR CASH SETTLEMENT

Once we receive your completed questionnaire, we will determine if you are eligible for a cash settlement and let you know in writing within the next several months. If you are eligible, we will also tell you how much the settlement will be. Please let us know if you change your address in the next several months, so we can contact you again.

You will *not* have to return your Solar Furnace or solar collector if you decide to take the cash settlement. However, you *will* have to sign a waiver form which we will send

you. By signing the waiver you will give up any rights you may have remaining under a warranty if you got a warranty from Champion. You will also give up your right to sue Champion for any existing claims you may have relating to your Solar Furnace or solar collector.

If you have any questions about this program, please contact:

Champion Solar Program
c/o Champion Home Builders Co.
5573 E. North Street
Dryden, Michigan 48428

[Telephone number]

Remember: You must mail the completed questionnaire to us by [return date]. Also, please remember to let us know if you change your address.

Sincerely yours,

Champion Home Builders Co.

Enclosures

ATTACHMENT F

[Champion letterhead]

[Date]

Dear :

As part of an agreement with the Federal Trade Commission, Champion Home Builders Co. is offering cash settlements to certain people who purchased Solar Furnaces and solar collectors manufactured by Champion. Some time ago, we sent you a letter notifying you of your eligibility for a cash settlement under this program. We also sent you a form to sign in order to accept your cash settlement.

We have received back your signed acceptance form. Unfortunately, we did not receive it in time to include you in the first group of people eligible for cash settlements. For that reason, the amount of the cash settlement you can receive has changed. We are sending you this letter to notify you of the change in your cash settlement, and to obtain your approval of the new amount.

AMOUNT OF YOUR CASH SETTLEMENT

The tentative amount of your cash settlement is now [tentative cash settlement amount]. The amount of money you will actually receive may increase slightly if someone who is eligible decides not to accept a settlement, but this amount will *not* be lowered.

HOW TO OBTAIN YOUR CASH SETTLEMENT

In order to obtain your cash settlement, you must sign and return the enclosed form entitled "Notice of Acceptance of Cash Settlement and Waiver of Claims." You must do this even though you previously signed and returned a form.

Please read this form and make your decision carefully. By signing and returning this form and accepting your cash settlement, you give up any rights you may have remaining under a warranty if you got a warranty from Champion. You also give up your right to sue Champion for any existing claims you may have relating to your Solar Furnace or solar collector.

Decision and Order

101 F.T.C.

If you decide to accept the cash settlement and give up these rights, please sign the form and return it to us in the enclosed envelope. You *must* mail the signed form back to us by [return date] to make certain you receive your settlement. We will then mail you a check within the next two months. If we do not receive your signed form in time, you will receive no cash settlement.

If you decide not to accept the cash settlement, please do not return the form. You will not give up any rights and you will not receive any money.

If you have any questions about this program, or if you change your address, please contact:

Champion Solar Program
c/o Champion Home Builders Co.
5573 E. North Street
Dryden, Michigan 48428

[Telephone number]

Remember: You must mail the signed waiver form to us by [return date].

Sincerely,

Champion Home Builders Co.

Enclosures

ATTACHMENT G

[Champion letterhead]

[Date]

Dear :

As part of an agreement with the Federal Trade Commission (FTC), Champion Home Builders Co. is offering cash settlements to certain people who purchased Solar Furnaces and solar collectors manufactured by Champion. We have reviewed our records and the questionnaire that you returned and have determined that you are *not eligible* for this program, for the following reason:

- ☐ Your Solar Furnace or solar collector was not manufactured by Champion.
- ☐ You are not the original purchaser.
- ☐ You were a Champion dealer and sold three or more Solar Furnaces or solar collectors.
- ☐ You were a dealer of an International Solarthermics Corporation licensee and sold one or more Solar Furnaces or solar collectors.
- ☐ You previously received a refund or monetary award from Champion.
- ☐ Your information was received after the program had ended.
- ☐ Other: _____

If you believe that our determination is incorrect, please contact:

Champion Solar Program
c/o Champion Home Builders Co.
5573 E. North Street
Dryden, Michigan 48428

[Telephone number]

For a copy of the FTC agreement, write:

Federal Trade Commission
Public Reference Branch
Room 130
Washington, D.C. 20580

We regret that we cannot be of assistance to you.

Sincerely yours,

Champion Home Builders Co.

ATTACHMENT H

[Champion letterhead]

[Date]

Dear Sir/Madam:

Our records indicate that you may own solar energy equipment manufactured by Champion Home Builders Co. As a result, we are sending you this important notice about your equipment.

IMPORTANT WARNING

Your Champion solar equipment contains wood and other flammable materials. Federal Government Agencies have recently expressed concern that wood in solar collectors may ignite when exposed to excessive heat over a long period of time. Although we do not expect a fire would occur under normal operating conditions, we recommend that these precautionary steps be taken.

1. CLOSE THE REFLECTOR SHIELD WHEN YOUR SOLAR EQUIPMENT IS NOT IN USE.

Always cover the collector when the unit is not operating to prevent build-up of excessive heat. Close the reflector shield to cover the collector during months you are not using your equipment. The reflector shield should also be closed if a motor or controller stops working, or if you have a power outage. If you do not have a reflector shield, use a tarpaulin or similar material to cover the collector.

2. NEVER SMOKE OR USE AN OPEN FLAME NEAR THE EQUIPMENT OR DUCTWORK.

Your Champion solar equipment and ductwork contain organic materials such as wood and polyurethane foam which can release toxic smoke if ignited. Therefore, you should never smoke or use an open flame, such as a butane torch, near the equipment or ductwork. The two warning labels enclosed with this letter should be glued to the outside of the Solar Furnace at the motor maintenance opening, and to the exposed ductwork inside your house.

3. INSTALL A SMOKE DETECTOR.

We believe that all homes should be equipped with smoke detectors. If you don't already have one, you should consider purchasing and installing a smoke detector in your home.

Decision and Order

101 F.T.C.

If you have any questions about this notice, you may call us at [telephone number].

Sincerely,

Champion Home Builders Co.

Enclosures

ATTACHMENT I

— WARNING —

**Combustible Materials
Do not expose to open flames**

IN THE MATTER OF
FOREMOST DAIRIES, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-1161. Consent Order, Jan. 23, 1967—Modifying Order, Feb. 17, 1983

This order reopens the proceeding and modifies the Commission's order issued on Jan. 23, 1967 (71 F.T.C. 56), by deleting Paragraph V from the order, so as to relieve respondent of the obligation of obtaining Commission approval prior to making certain acquisitions.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JANUARY 23, 1967

By a petition dated July 9, 1982, and supplements thereto dated October 14, 1982, November 16, 1982, and January 11, 1983, respondent Foremost-McKesson, Inc. (successor to Foremost Dairies, Inc.) ("Foremost") requests that the Commission reopen the proceeding in Docket No. C-1161 and delete Paragraph V of the order issued by the Commission on January 23, 1967. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Foremost's petition and supporting materials, and other relevant information, the Commission now finds that the public interest warrants reopening and modification of the order. The Commission has determined that absent special circumstances an order provision that requires prior Commission approval of acquisitions by the respondent should not exceed ten years in duration. The order in this case has been in effect for 16 years and the record does not demonstrate that continued prior approval of respondent's acquisitions is necessary.

Accordingly,

It is ordered, That this matter be, and it hereby is reopened and that Paragraph V of the Commission's order be and it is hereby deleted.