

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

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

Docket C-2492. Consent Order, March 18, 1974—Modifying Order, March 9, 1983

This order reopens the proceeding and modifies the Commission's order issued on March 18, 1974 (83 F.T.C. 1374). The modification deletes the order's "fencing-in" provision, including the requirement that prohibited Occidental from preparing statistical data comparing its purchases from a company to its sales to that company, and vacates the order in its entirety 10 years after its March 1974 issue date.

REOPENING AND VACATING IN PART AND MODIFYING IN PART
ORDER ISSUED MARCH 18, 1974

On November 8, 1982, respondent Occidental Petroleum Corporation ("Occidental") filed a "Request To Reopen And Vacate Or Modify Consent Order" ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Section 2.51 of the Commission's Rules of Practice. The Petition asks the Commission to reopen the consent order, issued on March 18, 1974 ("the Order"), and either: vacate the Order in its entirety; modify to limit the duration to a ten-year period; or modify "to bring it in line with current case law and enforcement attitudes."

Section 5(b) of the Federal Trade Commission Act provides that the Commission shall reopen an order at the request of a respondent upon a "satisfactory showing that changed conditions of law or fact require" modification. In addition, Section 5(b) provides that the Commission has discretion to modify orders whenever, in its opinion, the public interest requires.

After reviewing respondent's Petition, the Commission has concluded that respondent has not made a satisfactory showing that changed conditions of law or fact have occurred that require the modification or vacation of the Order. However, the Commission has determined that the public interest warrants modifying the pending Order in two respects.

First, a number of the Order's provisions are aimed at "fencing-in" respondent's future conduct. *See FTC v. National Lead Co.*, 352 U.S. 419 (1957). Although some of these provisions may have been justified at the time the Order was initially approved, their continued existence unnecessarily inhibits respondent from engaging in conduct which, in and of itself, is innocuous and may, in certain circum-

stances, be procompetitive. In addition, there no longer appears to be any need for continuing the "fencing-in" provisions of the Order. No adverse comments were received indicating any special need to retain them and the Commission has no reason to believe that the Order has or is being violated in any respect.

These same arguments support vacating the remaining provisions of the Order at the end of a ten year period. In certain cases, perpetual conduct orders are appropriate in order to insure that violations of Commission orders are subject to civil penalties rather than forcing the Commission to initiate proceedings *ab initio*. However, we have no evidence in this record that would support retaining the provisions of this Order in perpetuity.

Accordingly, *it is ordered* that Paragraphs I(f), (g), (h) and II of this Order be vacated at this time and the remaining provisions be vacated ten years from date of their initial entry, *i.e.*, March 18, 1974.

Commissioner Bailey voted in the affirmative as to elimination of the fencing-in provisions and in the negative as to sunseting the Order. Commissioner Pertschuk voted in the negative.

DISSENTING STATEMENT OF COMMISSIONER PERTSCHUK

I agree that the broad "fencing-in" provisions in the order are no longer necessary and should be narrowed to prohibit only anticompetitive reciprocal dealing. The Commission goes further, however, by terminating the order completely after ten years.

Our general policy in the past has been to issue perpetual conduct orders as to conduct which actually violates Section 5 unless there are persuasive reasons to create an exception. Here, however, the Commission appears to reverse that presumption by requiring "evidence in this record" supporting a perpetual order. It is not clear that the Commission is making a change in policy for future cases, but, in any event, I dissent from the result in this case.

IN THE MATTER OF

STERLING DRUG, INC., ET AL.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT*Docket 8899. Final Order, Oct. 1, 1974—Modifying Order, March 11, 1983*

This order reopens the proceeding and modifies the Commission's order issued on Oct. 1, 1974 (84 F.T.C. 547). The modified order permits respondents to make claims that environmental surfaces play a significant role in the transmission of viruses and bacteria associated with colds and that household disinfectants can reduce the incidence or prevent the spread of colds, if supported by competent and reliable scientific evidence.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On September 20, 1982, Sterling Drug, Inc. and SSC&B, Inc., respondents in the above-captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the consent order entered therein. By letter dated January 17, 1983, respondents agreed to modify their original proposal.

The consent order, which was issued in 1974, applies to Lysol or any other household disinfectant products. Sterling Drug manufactures and markets Lysol Brand Disinfectants. SSC&B prepared and distributed the advertising for Lysol Brand Disinfectants which was challenged in the complaint. The advertising represented that Lysol Brand Disinfectants could be used to kill influenza viruses and other germs and viruses on environmental surfaces and in the air, and that such use would be of significant medical benefit in reducing the incidence or preventing the spread of colds, influenza, and other upper respiratory diseases within the home. However, the prevailing view among scientists at the time the advertising was disseminated was that airborne germs and viruses were the known cause of most colds, influenza, and other upper respiratory diseases, that germs and viruses on environmental surfaces did not play a significant role in the transmission of colds, influenza, and other upper respiratory diseases, and that Lysol Brand Disinfectants would not be of medical benefit in reducing the incidence or preventing the spread of these diseases. Consequently, paragraphs I.A and I.B of the consent order prohibited the following claims: