

IN THE MATTER OF

SUCCESS MOTIVATION INSTITUTE, INC., ET AL.

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

Docket C-1768. Consent Order, July 14, 1970—Modifying Order, March 22, 1983

The Federal Trade Commission, having received no objections to a show cause order, has reopened this proceeding and modified its order issued on July 14, 1970 (77 F.T.C. 943), so as to provide prospective franchisees and distributors with more information on sales data, as well as success and failure rates, so that they may better evaluate their chances for success.

ORDER REOPENING THE PROCEEDING AND
MODIFYING THE DECISION AND ORDER

On July 14, 1970, in this matter the Commission issued against respondents Success Motivation Institute, Inc. and Paul J. Meyer, in connection with the sale of franchises or distributorships, in commerce (as "commerce" is defined in the Federal Trade Commission Act), a Decision and Order to Cease and Desist.

On December 8, 1982, the Commission issued an order for respondents to show cause why the proceeding should not be reopened and the Decision and Order to Cease and Desist issued on July 14, 1970, should not be modified in a certain respect.

Respondents Success Motivation Institute, Inc. and Paul J. Meyer raised no objection to the proposed modification.

Therefore, the Commission being of the opinion that the proposed modification will increase the ability of prospective purchasers to evaluate their chances for success as distributors or franchisees of respondents and, therefore, that the public interest will be served by modifying the Decision and Order in this matter as requested,

It is ordered, That the proceeding be, and hereby is, reopened.

It is further ordered, That the Decision and Order issued on July 14, 1970, be, and hereby is, modified by deleting paragraph (3) of the order and by substituting for paragraph (4) of the order the following (with paragraphs to be renumbered appropriately):

(4) Failing to furnish to prospective franchisees or distributors a written tabulation or statistical summary showing, on an accumulative and comparative basis, for each fiscal year, for each of the corporate respondent's operating divisions the following information as it per-

tains to the division of which the prospective franchisee or distributor is considering acquisition of a franchise or distributorship:

(a) The median and mean gross sales to respondents' franchisees or distributors exclusive of initial inventories sold to new franchisees or distributors during the fiscal year.

(b) The number of franchisees or distributors at the beginning of the fiscal year, the number appointed during the year, the number terminated during the year, the number retained at the end of the year, and the length of time that those retained at the end of the year have been respondents' franchisees or distributors.

(c) The foregoing information shall be tabulated as a running 4-year analysis so that prospective franchisees or distributors will be furnished such information for the 4 fiscal years immediately preceeding the year in which the information is to be furnished, *provided* that, the information for the fiscal year most recently completed prior to the year in which the information is to be furnished will be made available within 45 days of the close of the fiscal year.

(d) The tabulation will include all franchisees or distributors, whether full or part time, whether or not purchases were made during the fiscal year(s) on which the tabulation is based.

(e) The information required to be furnished under this paragraph will be given to prospective franchisees or distributors at the first face-to-face meeting or 10 days before the execution of any franchise or distributor agreement, whichever comes first, on a separate document which the prospective franchisee or distributor may keep.

IN THE MATTER OF

DAMON CORPORATION

*Docket C-2916. Show Cause Order, March 29, 1983*ORDER TO SHOW CAUSE WHY ORDER REQUIRING COMMISSION APPROVAL
FOR CERTAIN ACQUISITIONS SHOULD NOT BE MODIFIED

On June 2, 1982, respondent Damon Corporation ("Damon") filed a petition requesting that the Commission reopen the proceeding in Docket No. C-2916 and eliminate that portion of the Order requiring Damon to obtain prior Commission approval for acquisitions of independent laboratories in twelve geographic markets and to notify the Commission of any other acquisitions of independent laboratories. The petition was placed on the public record pursuant to Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51. Although Rule 2.51 and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), require that the Commission decide petitions to reopen within 120 days, Damon voluntarily waived that deadline in this case. On January 31, 1983, the Commission denied Damon's petition, concluding that the petition failed to demonstrate that either changed conditions or the public interest required elimination of the prior approval requirement. However, the Commission believes that it may be in the public interest to exempt small laboratories from the requirement, and is therefore issuing this order to show cause why a partial modification should not be ordered.

*A. Complete Elimination Of The Prior Approval
Requirement Is Not Warranted*

As described in more detail in the letter denying Damon's petition, the Commission found that Damon had not demonstrated any harm to competition such that the public interest would require complete elimination of the prior approval requirement. In considering petitions to reopen under Rule 2.51, the Commission balances the reasons for modifying an order against the reasons for its retention. Damon's principal argument was that the order, as a practical matter, prevented acquisitions that were necessary to permit Damon to compete effectively. However, Damon's petition did not provide any evidence that its allegations in this regard extended beyond smaller acquisitions only.

Damon also alleged that the order served no valid purpose because no acquisition of medical laboratories could possibly injure competition. Were this true, then even limited evidence of injury to Damon