

IN THE MATTER OF

RED APPLE COMPANIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9266. Complaint, May 27, 1994--Decision, Feb. 28, 1995

This consent order requires, among other things, three New York-based companies and their officer to divest six supermarkets, within 12 months, to a Commission-approved acquirer or acquirers. If the respondents fail to satisfy the divestiture requirements, the consent order permits the Commission to appoint a trustee to divest supermarkets to satisfy the terms of the order. The consent order also prohibits the respondents, for ten years, from acquiring, without prior Commission approval, any supermarket or any interest in an entity that owns or operates a supermarket in New York County south of 116th Street. In addition, the respondents, for ten years, are prohibited from entering into or enforcing any restrictions that would prevent any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street from operating the stores as supermarkets.

Appearances

For the Commission: *Ronald Rowe, James Fishkin and Mary Lou Steptoe.*

For the respondents: *Jonathan Honig and Martin Bring, Lowenthal, Laudau, Fishcher & Bring, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondents Red Apple Companies, Inc., a corporation, John A. Catsimatidis, an individual, Supermarket Acquisition Corp., a corporation, and Designcraft Industries, Inc. (d/b/a Sloan's Supermarkets, Inc.), a corporation, all subject to the jurisdiction of the Commission, have acquired certain assets of Sloan's Supermarkets, Inc. (a/k/a CKMR Corporation), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45,

and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. "*Supermarket*" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; other grocery products, including nonfood items such as soaps, detergents, paper goods; other household products; and health and beauty aids.

b. "*Red Apple*" means Red Apple Companies, Inc., its parents, predecessors, subsidiaries, divisions, groups and affiliates (including Red Apple Supermarkets, Inc., Gristede's Supermarkets, Inc., and Supermarket Acquisition Corp.), and their directors, officers, employees, agents, partners, and representatives (including John A. Catsimatidis), and their respective successors or assigns.

c. "*Sloan's*" means Sloan's Supermarkets, Inc. (a/k/a CKMR Corporation), its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents, partners, and representatives, and their respective successors or assigns.

d. "*John A. Catsimatidis*" means John A. Catsimatidis, an individual and Chairman and Chief Executive Officer of Red Apple Companies, Inc., and Chairman, Chief Executive Officer, and Treasurer of Designcraft Industries, Inc.

e. "*SAC*" means Supermarket Acquisition Corp., its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents, partners, and representatives, and their respective successors or assigns.

f. "*Designcraft*" means Designcraft Industries, Inc. (d/b/a Sloan's Supermarkets, Inc.), its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents,

partners, and representatives, and their respective successors or assigns.

RED APPLE COMPANIES, INC.

2. Respondent Red Apple is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices located at 823 Eleventh Avenue, New York, New York.

3. Respondent Red Apple is, and at all times relevant herein has been, engaged in the operation of supermarkets in New York County, New York.

4. Respondent Red Apple is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

JOHN A. CATSIMATIDIS

5. Respondent John A. Catsimatidis is the Chairman, Chief Executive Officer, and sole shareholder of Red Apple Companies, Inc., and Chairman, Chief Executive Officer, Treasurer, and principal shareholder of Designcraft Industries, Inc., with his office and principal place of business at 823 Eleventh Avenue, New York, New York.

6. Respondent John A. Catsimatidis controls, directs, or influences the operations of Red Apple Companies, Inc., Supermarket Acquisition Corp., and Designcraft Industries, Inc.

7. Respondent John A. Catsimatidis is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is an individual whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

SUPERMARKET ACQUISITION CORP.

8. Respondent SAC is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices located at 823 Eleventh Avenue, New York, New York.

9. Respondent SAC is an entity owned by John A. Catsimatidis and used by him to acquire assets from Sloan's.

10. Respondent SAC is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

DESIGNCRAFT INDUSTRIES, INC.

11. Respondent Designcraft (d/b/a Sloan's Supermarkets, Inc.) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 823 Eleventh Avenue, New York, New York.

12. Respondent Designcraft is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

ACQUISITIONS

13. On or about April 16, 1991, Red Apple entered into an agreement with Sloan's identifying for acquisition 20 Sloan's supermarkets located in New York County, New York. Subsequently, Red Apple acquired 18 of these supermarkets and three additional supermarkets from Sloan's in New York County, New York. Sloan's Supermarkets, Inc. subsequently changed its name to CKMR Corporation.

14. On or about December 24, 1992, Designcraft entered into an agreement with CKMR Corporation (formerly Sloan's Supermarkets, Inc.) for the acquisition of the 11 remaining Sloan's supermarkets.

On or about March 23, 1993, Designcraft acquired these supermarkets from CKMR Corporation. Designcraft subsequently changed its name to Sloan's Supermarkets, Inc.

TRADE AND COMMERCE

15. Relevant lines of commerce in which to analyze the acquisitions described herein are the retail sale of food and grocery products in supermarkets, and narrower markets contained therein.

16. Relevant sections of the country in which to analyze the acquisitions described herein are residential neighborhoods in New York County, New York, located within the Upper East Side, the Upper West Side, Chelsea, and Greenwich Village.

MARKET STRUCTURE

17. The retail sale of food and grocery products in supermarkets in the relevant sections of the country is concentrated, whether measured by the Herfindahl-Hirschmann Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios.

ENTRY CONDITIONS

18. Entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

ACTUAL COMPETITION

19. Prior to the acquisitions described herein, Red Apple and Sloan's were actual competitors in the relevant lines of commerce and sections of the country.

EFFECTS

20. The effect of the acquisitions may be substantially to lessen competition in the relevant lines of commerce in the relevant sections of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade

Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct competition between supermarkets owned or controlled by Red Apple or John A. Catsimatidis and supermarkets owned or controlled by Sloan's;
- b. By increasing the likelihood that Red Apple or John A. Catsimatidis will unilaterally exercise market power; or
- c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction,

Each of which increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

VIOLATIONS CHARGED

21. The acquisitions by Red Apple and Designcraft of assets of Sloan's violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 the Commission's Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Red Apple Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices located at 823 Eleventh Avenue, New York, New York.

2. Respondent John A. Catsimatidis is the Chairman, Chief Executive Officer, and sole shareholder of Red Apple Companies, Inc., and Chairman, Chief Executive Officer, Treasurer, and the largest shareholder of Sloan's Supermarkets, Inc., with his office and principal place of business at 823 Eleventh Avenue, New York, New York.

3. Respondent Supermarket Acquisition Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices located at 823 Eleventh Avenue, New York, New York.

4. Respondent Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 823 Eleventh Avenue, New York, New York.

5. 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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Commission*" means the Federal Trade Commission.

B. "*Red Apple*" means Red Apple Companies, Inc., its parents, predecessors, subsidiaries, divisions, groups and affiliates (including Red Apple Supermarkets, Inc., Gristede's Supermarkets, Inc., and Supermarket Acquisition Corp.), and their directors, officers, employees, agents, partners, and representatives (including John A. Catsimatidis), and their respective successors or assigns.

C. "*John A. Catsimatidis*" means John A. Catsimatidis, an individual and Chairman and Chief Executive Officer of Red Apple Companies, Inc., and Chairman, Chief Executive Officer, and Treasurer of Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.).

D. "*SAC*" means Supermarket Acquisition Corp., its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents, partners, and representatives, and their respective successors or assigns.

E. "*SSI*" means Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.), its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents, partners, and representatives, and their respective successors or assigns.

F. "*Respondents*" means Red Apple, John A. Catsimatidis, SAC, and SSI.

G. "*Assets to be divested*" means the assets described in paragraphs II. A. and II. B. of this order.

H. "*Supermarket*" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

II.

It is further ordered, That respondents shall divest six supermarkets in the following manner:

A. Respondents shall divest, absolutely and in good faith, within twelve months from the date this order becomes final, four of the following listed supermarkets, with one supermarket located in each of the four areas identified below within New York County, New York:

1. Upper East Side:

- a. Sloan's located at 1407 Lexington Avenue (store no. 425);
- b. Sloan's located at 1343-1347 Lexington Avenue (store no. 437); or
- c. Gristede's located at 1356 Lexington Avenue (store no. 52).

2. Upper West Side:

- a. Sloan's located at 530-34 Amsterdam Avenue (store no. 435); or
- b. Gristede's located at 251 West 86th Street/2361 Broadway (store no. 56).

3. Chelsea:

- a. Gristede's located at 188 Ninth Avenue (store no. 441, formerly under the Sloan's trade name) or the nearest alternate supermarket owned or operated by any respondent.

4. Greenwich Village:

- a. Sloan's located at 585 Hudson Street (store no. 410) or the nearest alternate supermarket owned or operated by any respondent; or
- b. Gristede's located at 25 University Place (store no. 82) or the nearest alternate supermarket west of Broadway owned or operated by any respondent.

The assets to be divested shall consist of the grocery business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations that are divested.

B. Respondents shall also divest, absolutely and in good faith, within twelve months from the date this order becomes final, two of the following listed supermarkets, with one supermarket from one area identified below within New York County, New York, and the other supermarket from a different area identified below within New York County, New York:

1. Upper East Side:

In addition to one of the three Upper East Side supermarkets listed in paragraph II. A. 1., either one other supermarket listed in paragraph II. A. 1., or one of the following:

- a. Sloan's located at 1245 Park Avenue (store no. 38, formerly under the Red Apple trade name);
- b. Gristede's located at 205 East 96th Street (store no. 98);
- c. Gristede's located at 350 East 86th Street (store no. 50);
- d. Sloan's located at 1668 Second Avenue (store no. 434);
- e. Gristede's located at 1644 York Avenue (store no. 53); or
- f. Sloan's located at 1637 York Avenue (store no. 507).

2. Upper West Side:

In addition to one of the two Upper West Side supermarkets listed in paragraph II.A.2., either one other supermarket listed in paragraph II.A.2., or the following:

- a. A supermarket owned or operated by any respondent and located within four blocks of either of the two supermarkets listed in paragraph II. A. 2.

3. Greenwich Village:

In addition to one of the four Greenwich Village supermarkets listed in paragraph II.A.4., either one other supermarket listed in paragraph II.A.4., or one of the following:

- a. Gristede's located at 77 Seventh Avenue (store no. 37) or the nearest alternate supermarket owned or operated by any respondent;
- or

b. Gristede's located at 311 Bleecker Street (store no. 83) or the nearest alternate supermarket owned or operated by any respondent.

The assets to be divested shall consist of the grocery business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations that are divested.

C. Respondents shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the assets to be divested is to ensure the continuation of the assets to be divested as ongoing, viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisitions as alleged in the Commission's complaint.

D. Pending divestiture of such assets to be divested to comply with paragraphs II. and III. of this order, respondents shall take such actions as are necessary to maintain the viability and marketability of such assets to be divested to comply with paragraphs II. and III. of this order and to prevent the destruction, removal, wasting, deterioration, or impairment of such assets to be divested to comply with paragraphs II. and III. of this order except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, such assets to be divested to comply with paragraph II. of this order within twelve months from the date this order becomes final, the Commission may appoint a trustee to divest any of the supermarkets listed in paragraph II. (and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations) that are owned or operated by any respondent at the time of the appointment of the trustee in order to satisfy the requirements of paragraphs II. A. and II. B. of this order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l),

or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the supermarkets listed in paragraph II (and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations) that are owned or operated by any respondent at the time of the appointment of the trustee in order to comply with paragraph II. of this order.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by paragraph II. of this order. Such trust agreement may include a confidentiality agreement.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in paragraph III.B.3. to accomplish the divestitures, which shall be

subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to any of the supermarkets listed in paragraph II. (and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations) or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in paragraph II. of this order; provided, however, if the trustee receives *bona fide* offers, for any particular supermarket to be divested, from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such supermarket, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived

from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy paragraph II. of this order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every ninety (90) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years commencing on the date this order becomes final, respondents shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any supermarket or leasehold interest in any supermarket located in New York County, New York, south of 116th Street, including any

facility that has operated as a supermarket in this area within six (6) months of the date of the proposed acquisition; or

B. Acquire any stock, share capital, equity, or other interest in: (1) any entity that owns any interest in or operates any supermarket located in New York County, New York, south of 116th Street, or (2) any entity that owned any interest in or operated any supermarket located in New York County, New York, south of 116th Street within six (6) months of the date of the proposed acquisition.

Provided, however, that an acquisition otherwise covered by the requirements of this paragraph shall be exempt from the requirements of this paragraph if it is an acquisition by John A. Catsimatidis or by a respondent corporation from a respondent corporation or from John A. Catsimatidis.

V.

It is further ordered, That, for a period of ten (10) years commencing on the date this order becomes final, respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) acquiring any supermarket owned or operated by any respondent, any leasehold interest in any supermarket, or any interest in any retail location that formerly operated as a supermarket in New York County, New York, south of 116th Street, to operate a supermarket or retail food store.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II. or III. of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II. and III. of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II.

and III. of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order.

VII.

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

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondents, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of any respondent relating to any matters contained in this order; and

B. Upon five days' written notice to respondents and without restraint or interference from them, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

Commissioner Varney not participating.

IN THE MATTER OF

AMERICAN INSTITUTE OF SMOKING CESSATION, ET AL.

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

Docket C-3560. Complaint, March. 3, 1995--Decision, March. 3, 1995

This consent order prohibits, among other things, an Illinois-based company and its two officers from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation, and from representing, through any endorsement or testimonial, the achievements of participants who attend their smoking cessation or weight-loss seminars unless the representation reflects the typical or ordinary experience of participants of such programs. In addition, the consent order prohibits the respondents from misrepresenting the contents, results or validity of any study, test, survey or report.

Appearances

For the Commission: *Matthew Daynard.*

For the respondents: *Robert E. Kehoe and Daniel S. Kaplan, Wildman, Harrold, Allen & Dixon, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that American Institute of Smoking Cessation, Inc. ("AISC"), a corporation, Kenneth C. Grossman, individually and as an officer of said corporation, and Jane A. Grossman, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent AISC is an Illinois corporation, with its principal office and place of business at 318 South Garfield, Hinsdale, Illinois.

Respondents Kenneth C. Grossman and Jane A. Grossman are, respectively, the President/Treasurer and Vice-President/Secretary