

Complaint

IN THE MATTER OF

**WFS ENTERPRISES, INC. d/b/a
THE CASH NURSERY, ET AL.**

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

*Docket C-4129; File No. 0023025
Complaint, January 3, 2001--Decision, January 3, 2001*

This consent order addresses representations by Respondent W.F.S. Enterprises, Inc., doing business as The Cash Nursery, and Respondents Rabb Sabin and Arthur Smith, officers of the corporation, concerning the earnings and profit potential, and the extent of risk involved, in using the respondents' trading methods -- embodied in a training program they sell on the Internet -- for the daily buying and selling of stock and commodity options ("day trading"). The order, among other things, requires the respondents to possess a reasonable basis substantiating any representation (1) that users of their currency trading program can reasonably expect to earn large profits; and (2) that users of their commodity and stock option trading program can reasonably expect to earn large profits, or as much as six figures annually; to realize consistent investment returns of 100 percent to 500 percent on their trades; and to secure returns of 100 percent or better on 90 percent or more of their trades. The order also prohibits the respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk, and from misrepresenting the extent of risk to which users of any such program are exposed. In addition, the order requires the respondents to disclose, clearly and conspicuously, that "Stock, commodity futures, and stock or commodity options trading involve HIGH RISKS and YOU can LOSE a lot of money.," in close proximity to any representation they make about the financial benefits of any trading program.

Participants

For the Commission: *Karen Leonard, Stephen Gurwitz, and Eileen Harrington.*

For the Respondents: *Paul W. Thomas, Paul W. Thomas and Associates.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that WFS Enterprises, Inc., d/b/a The Cash Nursery, a corporation, and Rabb Sabin and Arthur Smith, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent WFS Enterprises, Inc., d/b/a The Cash Nursery, is a Nevada corporation with its principal office or place of business at 2914 East Katella, Suite 212, Orange, California 92867.
2. Respondent Rabb Sabin is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of WFS Enterprises, Inc.
3. Respondent Arthur Smith is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of WFS Enterprises, Inc.
4. Respondents have advertised, offered for sale, sold, and distributed stock and commodity futures trading training and computer programs to the public. Respondents advise their clients to buy and sell specific commodities futures and/or stock and/or commodities options on a daily or weekly basis. Respondents sell their program and training through their Internet Web site, www.the-cash-nursery.com.
5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in

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Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. Respondents have disseminated or have caused to be disseminated Internet advertisements for their commodity and stock option trading programs and training, including but not necessarily limited to the attached Exhibit A, pages 1 through 14. These advertisements contain the following statements:

a. “90% WINNING TRADES” and “a proven strategy with a 90% success rate...really!”

b. “[O]ur extraordinary trading methodologies and strict money management principles produce an average of 80-90% winning trades.”

c. [Chart: as of April 1999]

MONTH	% SUCCESSFUL TRADES
January	88%
February	100%
March	79%
April	82%
May	86%
June	94%
July	91%
August	95.5%
September	96%
October	96.4%
November	95%
98 - Average	91.18%
January - 99	89%
February	90%
March	88%
April	94%
99 - Average	90.25

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d. “When we first developed TCN’s trading methods, we back-tested thousands of possible trades over a twelve-month period. The computers ran 24 hours a day for one full month. The outcome? Believe it our not, the system was 96.7% accurate in selecting successful trades.”

e. “Investment returns we enjoy on stock options average 150% - 500%, while returns on commodity options average 100% - 400%.”

f. “At the time of the interview, Rabb had just made \$100,000 plus in a Coffee Trade. He went on to turn that amount into over \$500k by the year’s end.”

g. [consumer testimonial] “Within my first week with TCN, I invested \$280 for a return of \$1020 and \$425 for a return of \$1200. That is an incredible 314% return on investment.”

h. [consumer testimonial] “I grossed \$12,953 in my first month with The Cash Nursery. I’m not talking about once in awhile big profits.”

i. [consumer testimonial] “First, I got a call in hogs and made \$832 profit in 9 days! Then I got a put in hogs and rode that sucker back down and made \$1,755 in 10 days. That combined with my other trades made me more money in 2 weeks than I make in 4 MONTHS at my current job! My favorite part of the entire methodology is that I am usually in and out of the trade with my profits in 10 days or less!”

j. [consumer testimonial] “I hit my sell stop in Swiss francs today at 105 points. Excellent! My Feb[ruary] Swiss France 68 put cost 34 points, and sold at 105 points. So ... $105 - 34 = 71$ points. $71 \times \$12.50 = \887.50 gross profit. That’s over 300% gross profit!”

k. “System Trades©, a proprietary program, shows you how to

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turn \$500 into \$52,700.”

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that:

- a. Users of respondents’ commodity and stock option trading program can reasonably expect to earn large profits, or as much as six figures annually.
- b. Users of respondents’ commodity and stock option trading program can reasonably expect consistent investment returns of 100% to 500% on their trades;
- c. Users of Respondents’ commodity and stock option trading program can reasonably expect 95% or more of their trades to yield returns of 100% or better;
- d. Testimonials appearing in the advertisements for respondents’ commodity and stock option trading program reflect the typical or ordinary experience of members of the public who use the program.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that users of

Complaint

respondents' commodity trading program can reasonably expect to trade with little financial risk.

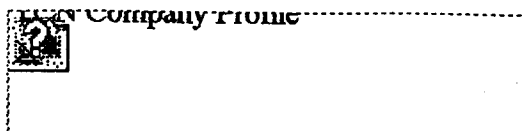
11. In truth and in fact, users of respondents' commodity and stock option trading program cannot reasonably expect to trade with little financial risk. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

12. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twelfth day of January, 2001, has issued this complaint against respondents.

EXHIBIT A

**The Cash
Nursery
(TCN)**



**Online Slide
Show**

Ken Roberts?

TCN Profile

**Student
Testimonials**

**Curriculum:
What You'll
Learn**

**Questions
& Answers**

TCN Promise

**TCN's 90%
Track Record**

Tuition Options

**98% Club:
Are you a
member?**

**Your Opinion
Wanted**

**Trading
Resources**

Contact Us

"My trading experiences since I just finished studying TCN's methods are unbelievable! First, I got a call in hogs and made \$832 profit in 9 days! Then I got a put in hogs and rode that sucker back down and made \$1,755 in 10 days!

That combined with my other trades made me more money in 2 weeks than I make in 4 MONTHS at my current job! My favorite part of the entire methodology is that I am usually in and out of a trade with my profits in 10 days or less!"

Bud Glass ~ Florida ~ December 17, 1998

Hello and welcome to our Garden!

Your visit here could very well change your life! We're a small group of traders and investors who believe in sharing our good fortune with people like you. Our Master Cash Gardener, Rabb Sabin, has been trading since 1993. Those of you who have had any contact with the Ken Roberts Company may know about him through a taped interview by Jim Roberts in 1994. Rabb's interview still appears on the "Conversations with Course Members" tape sent out to new prospective students. At the time of the interview, Rabb had just made \$100,000 plus in a Coffee trade. He went on to turn that amount into over \$550K by the year's end. At times, if you notice an apparent emphasis on commodities - well, it's hard to blame him.

~ 90% WINNING TRADES ~

TCN does trade in the stock market with options on a regular basis. And our extraordinary trading methodologies and strict money management

principles produce an average of 80-90% winning trades. No, we don't pretend to be "trading know-it-alls" by any stretch of the imagination, but we are very good at what we do.

When we first developed TCN's trading methods, we back-tested thousands of possible trades over a twelve-month period. The computers ran 24 hours a day for one full month. The outcome? Believe it or not, the system was 96.7% accurate in selecting successful trades.

~ LEARN CASH GARDENING HERE ~

Why do we call this place The Cash Nursery? Well, what do nurseries do? They grow things! And growing anything requires specific knowledge, to make sure that what you plant grows up strong and healthy. Here at TCN we plant our seeds, keep our gardens free of weeds, harvest the winners, and replant again! At the Cash Nursery we'll share those gardening methods with you. We'll show you what we're doing, how we're doing it, how and when we plant and harvest. You'll see the flowers as well as the weeds.

In commodities, you'll see straight option trades that provide maximum returns on your investment, as well as alternative methods that may allow you to take advantage of markets you might not otherwise be able to purchase if you are trading with a limited account. These techniques include spreads, straddles, strips, straps, and others - even trades that allow you to begin with a straight option and end up in a spread.

In the stock market, you'll learn our methods for trading options, as well as how to take advantage of stock splits, leaps, etc. Did you know that an option can actually end up being worth more than its underlying market?

We'll provide you with places on the internet where you can do trading research. We'll share our brokers with you and, if necessary, recommend others based

on their honesty and excellent service. We'll also share with you simple systems which maximize your returns in a short amount of time. You'll learn how to read and understand trading charts. We provide you with unlimited e-mail and live chat support as well as a TCN member's forum board. If you prefer, one-on-one live chat sessions or phone calls are always available during office hours for our members.

We believe using options as our trading vehicle is much safer than straight contracts or stocks because risk is much more manageable. Keeping investment drawdown to a minimum is paramount.

The Cash Nursery is designed in a very simple manner so that all can participate - no matter what your current knowledge of trading. We start with the basics, then advance through each trading concept, step-by-step, until all the pieces come together. TCN's trading curriculum is designed to:

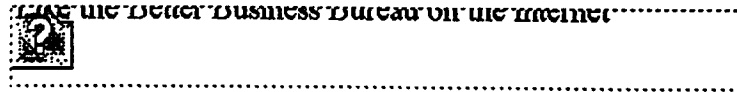
- Share both concepts and practical trading information you can apply right now
- Teach you how to grow your own cash garden
- Help you earn quick returns on their investments.

Later in the course, you'll be able to participate in paper trading. Then you'll advance to the Trades Section where you'll see the trades our staff members do on a daily basis. We feel this "what is happening in the markets right now" approach is of much greater benefit to our members rather than referring to old trades done last week, last month or last year. Lists of trades that made someone lots of money doesn't help you now.

On an average week, TCN will typically be involved in five to twenty trades in both the stock and commodity markets. **Investment returns we enjoy on stock options average 150% - 500%, while returns on commodity options average 100% - 400%.** Yes, that sounds a bit phenomenal, but it really is true.

Even the Investor General's Warning agrees:
Subscribing to the Cash Nursery has been found to
cause wealth...

If you'd like to learn more, we recommend you view
TCN's Online Slide Show.



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few months!

Manning Endrina ~ July 9, 1997

"I would like to gladly share my first week experience with you, members and non-member.

I always thought you needed an excess amount of money and personal knowledge in order to invest in the stock/commodity market until TCN came into the picture. My brother recommended that I join TCN to learn the correct way of trading and while in the process of learning....trade like an expert.

Within my first week with TCN, I invested \$280 for a return of \$1020 and \$425 for a return of \$1200. That is an incredible 314% ROI (Return of Investment for you beginners like me.) Needless to say it was enough money to cover my membership, original investments and to once again play the market (using profits only).

You go into a trade knowing what your profits or losses will be. TCN offers total money management and an easy, stress free trading opportunity. I can hardly wait to see what my first month with TCN will be like. (Incidentally - the trades were in commodities options.)

Tanya Endrina ~ Ewa Beach, Hawaii ~ July 10, 1997

"Just to update you, I moved up my stops this morning to protect profits. Wheat 34 P stopped at 16.5 Swiss franc 68 P closed at 64, with stop at 51.

I am eagerly looking forward to everything you have to teach me in 1998. I don't know how any people tell you this, but I am very grateful you are there and doing what you do. I am not sure I could do the same. I could understand the thrill of teaching others this skill, but if I was financially

independent due to options investing and I had to deal with 2 or 3 hammerheads in a row, criticizing me for something beyond my control when I am just trying to help them! Well, I think I would just start to get tired of it.

I understand that not all positions will make money. It is the knowledge to make these decisions myself that is so valuable. I guess I just want to say thanks and tell you I am grateful you are where you are doing what you do.

Here's what followed a few days later:

By the way, I hit my sell stop in Swiss francs today @ 105 points. Excellent! My Feb Swiss Franc 68 put cost 34 points, and sold at 105 points. So... $105 - 34 = 71$ points. $71 \times \$12.50 = \887.50 gross profit. That's over 300% gross profit!

About the only thing I'm gun-shy about now is trading futures contracts with KRC methods."

Tom Bobst ~ North Olmstead, OH ~ January 1998

"I'm in and out of sugar with a gross profit of \$313 (I sold @ 48 pts.) This in just 3 hours time. This is the fastest trade I have ever made! A good example of why you want to have your sells tops in place right away. Thanks!"

Name withheld by request

"I think the Sunday live chat sessions would be great for myself and other working stiffs. Good idea.

Rabb, you probably wouldn't approve, but I after watching all my paper trades make money, I couldn't stand it anymore and had to make a couple of real money trades. These two trades have more than paid for my tuition at TCN. They were hogs and

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~ SECTION 2 ~

- Introduction to spreads, splits, and leaps as powerful trading tools
- System Trades[®] - proprietary program shows you how to turn \$500 into \$52,700

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Ken Roberts?

TCN Profile

**Student
Testimonials**

**Curriculum:
What You'll
Learn**

**Questions
& Answers**

TCN Promise

**TCN's 90%
Track Record**

**98% Club:
Are you a
member?**

**Your Opinion
Wanted**

**Trading
Resources**

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Ken Roberts?

TCN Profile

**Student
Testimonials**

**Curriculum:
What You'll
Learn**

**Questions
& Answers**

TCN Promise

**TCN's 90%
Track Record**

**98% Club:
Are you a
member?**

**Your Opinion
Wanted**

**Trading
Resources**

- Access allowed only after graduation
- Ensures you are equipped to trade!
- View the same trades that TCN plays
- All trades posted night before - not after the fact, as many other so-called "experts" do out there.
- View trades BEFORE they are made
- Allows you time to research each trade
- Decide for yourself if you want to make the trade

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Ken Roberts?

TCN Profile

**Student
Testimonials**

**Curriculum:
What You'll
Learn**

- Commodity & Stock options only
- TCN selects 8 - 15 trades per week (average)
- Trade length: Hours to 10 days (average)
- Preferred trades made in-the-money or at-the-money, never out-of-the-money
- Option premium range: \$100 - \$800
- All trades posted are actually played by TCN
- TCN criteria must be met to post trades!

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**Questions
& Answers**

TCN Promise

**TCN's 90%
Track Record**

**98% Club:
Are you a
member?**

**Your Opinion
Wanted**

**Trading
Resources**

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Ken Roberts?

TCN Profile

**Student
Testimonials**

**Curriculum:
What You'll
Learn**

**Questions
& Answers**

TCN Promise

**TCN's 90%
Track Record**

**98% Club:
Are you a
member?**

**Your Opinion
Wanted**

**Trading
Resources**

- Development of TCN's trading methods - back-tested thousands of possible trades over a twelve-month period
- Computers ran 24 hours a day for one full month to process data
- Outcome: 96.7% accurate in selecting successful trades

Month	% Successful Trades
January	88%
February	100%
March	79%
April	82%
May	86%
June	94%
July	91%
August	95.5%
September	96%
October	96.4%
November	95%
98-Average	91.18%
January-99	89%
February	90%
March	88%
April	94%
99-Average	90.25%

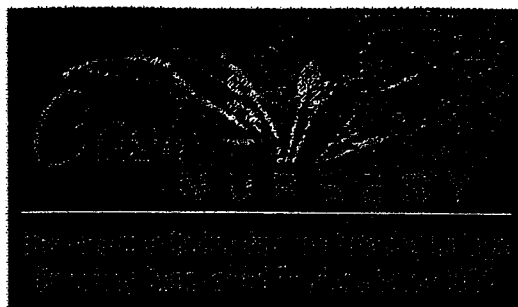
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6/9/99 12:00 PM



Members

**Online Slide
Show**

Ken Roberts?

TCN Profile

**Student
Testimonials**

**Curriculum:
What You'll
Learn**

**Questions
& Answers**

TCN Promise

**TCN's 90%
Track Record**

**98% Club:
Are you a
member?**

**Your Opinion
Wanted**

**Trading
Resources**

**Learn to trade commodity and stock options...
and succeed! Discover a proven strategy
with a 90% success rate...really!**

**TRADING IMPAIRED? YOU'VE FOUND THE RIGHT
PLACE!**

*"I grossed \$12,953 in my first month with
The Cash Nursery. I'm not talking about once
in awhile big profits. I'm talking consistent
profits, day to day."*

*TCN sneaks up on you...\$500 here...a \$1000
there...maybe \$2,000 there. And then you
realize you're in the money! The risk
management techniques make investing fun
and stress free!"*

Manning Endrina ~ July 9, 1997

ACCEPTING ONLY ~ 30 ~ NEW MEMBERS THIS MONTH!

Show

Online Slide

Submit



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eCOST.com



Brand Names
(computers and software)

Computers

LinkExchange

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Ken Roberts?**TCN Profile****Student
Testimonials****Curriculum:
What You'll
Learn****Questions
& Answers****TCN Promise****TCN's 90%
Track Record****~ RABB SABIN ~
~ Founder & Dean of Admissions ~**

- Starting trading in 1993
- Hit a big coffee trade in early 1994 with three options at \$1530 total invested
- Turned \$1530 into \$130,000 in 92 days, that 130K into \$550,000 by end of 1994
- Brought The Cash Nursery to the internet in September, 1996
- Passion is to help people achieve financial independence
- Master of Business Administration, San Diego State College, 1974
- Two tours in Vietnam, Special Forces Medic, 1968-1971
- Entrepreneur since graduating from college

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**98% Club:
Are you a
member?****Your Opinion
Wanted****Trading
Resources**

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Ken Roberts?**TCN Profile****Student
Testimonials****Curriculum:
What You'll
Learn****Questions
& Answers****TCN Promise****TCN's 90%
Track Record****~ ART SMITH ~
~ Operations & Support Manager ~**

- College at UCR in accounting, engineering
- Started trading in 1994
- Traded commodities & studied trading methods 1994 - present
- Studied technical analysis of trading 1995 - 1997
- Joined TCN in 1997
- Friend of Rabb Sabin for ten years
- Fluent in Spanish, written and spoken
- Grew up in Mexico
- Broadcasting degree from CBS
- US Army Medic, Viet Nam Vet, 1966-68
- Turned \$1000 into \$200,000 in one year using TCN methods

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**98% Club:
Are you a
member?****Your Opinion
Wanted****Trading
Resources**

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Decision and Order

DECISION AND ORDER

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

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft 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 Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the aforementioned executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent WFS Enterprises, Inc. is a Nevada corporation, doing business as The Cash Nursery, with its principal office or place of business at 2914 East Katella, Suite 212, Orange, California 92867.
2. Respondent Rabb Sabin is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation.

Decision and Order

His principal office or place of business is the same as that of WFS Enterprises, Inc.

3. Respondent Arthur Smith is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of WFS Enterprises, Inc.

4. 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

DEFINITIONS

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

1. “Clearly and conspicuously” shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however*, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type

Decision and Order

size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. In the case of advertisements disseminated by means of an interactive electronic medium such as the Internet or other online services, “in close proximity” shall mean on the same Web page and proximate to the triggering representation, and not on other portions of the Web site, accessed or displayed through hyperlinks or other means.

3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. “Trading program” shall mean any program, service, course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, or other financial instruments or investments.

5. Unless otherwise specified, “Respondents” shall mean WFS Enterprises, Inc., a corporation d/b/a The Cash Nursery, its successors and assigns, and its officers; Rabb Sabin and Arthur Smith, individually and as officers of the corporation; and each of the above’s agents, representatives, and employees.

Decision and Order

I.

IT IS ORDERED that Respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program in or affecting commerce, shall not represent, in any manner, expressly or by implication:

- A. That users of Respondents' commodity and stock option trading program can reasonably expect to earn large profits, or as much as six figures annually;
- B. That users of Respondents' commodity and stock option trading program can reasonably expect consistent investment returns of 100% to 500% on their trades;
- C. That users of Respondents' commodity and stock option trading program can reasonably expect 90% or more of their trades to yield returns of 100% or better;
- D. The amount of earnings, income, or profit that a prospective user could reasonably expect to attain; or
- E. Any financial benefit or other benefit of any kind from the purchase or use of such trading program;

unless Respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made.

II.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

Decision and Order

- A. That users of the program can reasonably expect to trade with little or no financial risk; or
- B. The extent of risk to which users of the program are exposed.

III.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the financial benefits of such program, unless they disclose, clearly and conspicuously, and in close proximity to the representation:

“Stock, commodity futures, and stock or commodity options trading involve HIGH RISKS and YOU can LOSE a lot of money.”

Provided, the disclosure required by this Part is in addition to, and not in lieu of, any other disclosure that Respondents may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The requirements of this Part are not intended to, and shall not be interpreted to, exempt Respondents from making any other disclosure.

IV.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user, testimonial or endorsement of the trading program represents the typical or ordinary experience of members of the public who use the trading program unless:

Decision and Order

- A. Respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made; or
- B. Respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either:
 - 1. what the generally expected results would be for users of the trading program, or
 - 2. the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

For purposes of this Part, “endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

V.

IT IS FURTHER ORDERED that respondent WFS Enterprises, Inc., d/b/a The Cash Nursery, and its successors and assigns, and respondents Rabb Sabin and Arthur Smith shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements, instruction material, and promotional materials (including packaging) containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

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VI.

IT IS FURTHER ORDERED that respondent WFS Enterprises, Inc., d/b/a The Cash Nursery, and its successors and assigns, and respondents Rabb Sabin and Arthur Smith shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain, and upon request make available to the Commission for inspection and copying, each such signed and dated statement for a period of five (5) years after creation.

VII.

IT IS FURTHER ORDERED that respondent WFS Enterprises, Inc. d/b/a The Cash Nursery, and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

VIII.

IT IS FURTHER ORDERED that respondent Rabb Sabin, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or

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employment involving the advertising, promotion, offering for sale or sale of any business or business venture, franchise; or any business or employment related, directly or indirectly, to the purchase or sale of stocks, currencies, commodity futures, options, or other financial instruments or investments. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Arthur Smith, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising, promotion, offering for sale or sale of any business or business venture, franchise; or any business or employment related, directly or indirectly, to the purchase or sale of stocks, currencies, commodity futures, options, or other financial instruments or investments. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

X.

IT IS FURTHER ORDERED that respondent WFS Enterprises, Inc. d/b/a The Cash Nursery, and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on January 12, 2021, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation

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of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not effect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XII.

All notices required to be sent to the Commission pursuant to this Order shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580. ATTN: In the Matter of WFS Enterprises, Inc. d/b/a The Cash Nursery.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

Issued when the Commission tentatively approved a proposed consent order on October 6, 2001

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from W.F.S. Enterprises, Inc., a corporation, doing business as The Cash Nursery, and Rabb Sabin and Arthur Smith, individually and as officers of the corporation (together, “respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Respondents sell a training program on the Internet for the daily buying and selling of stock and commodity options (also known as “day trading”). They advertise on their Internet Web site, www.thecashnursery.com. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents’ trading methods.

The Commission’s proposed complaint alleges that respondents made unsubstantiated claims that users of respondents’ options trading program could reasonably expect to earn large profits, as much as seven figures annually (*i.e.*, more than \$1,000,000); that users could reasonably expect consistent investment returns of 100% to 500% on their trades; and that testimonials appearing in the advertisements for respondents’ options trading program reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of their options trading program could reasonably expect to trade with little financial risk.

Analysis

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn large profits: (1) that users of Respondents' commodity and stock option trading program can reasonably expect to earn large profits, or as much as six figures annually; (2) that users of Respondents' commodity and stock option trading program can reasonably expect consistent investment returns of 100% to 500% on their trades; and (3) that users of Respondents' commodity and stock option trading program can reasonably expect 90% or more of their trades to yield returns of 100% or better. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "Stock, commodity futures, and stock or commodity options trading involve HIGH RISKS and YOU can LOSE a lot of money." in close proximity to any representation they make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading

Analysis

program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires W.F.S. Enterprises, Inc. to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Parts VIII and IX require that individual respondents Rabb Sabin and Arthur Smith, respectively, to notify the Commission of changes in their employment status for a period of ten years. Part X requires W.F.S. Enterprises, Inc. to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

GLAXO WELLCOME PLC, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3990; File No. 0010088**Complaint, December 15, 2000--Decision, January 26, 2001*

This consent order addresses the merger of Respondent Glaxo Wellcome plc (“Glaxo”) and Respondent SmithKline Beecham plc (“SB”). The order, among other things, requires the respondents (1) to divest all of SB’s worldwide rights and intellectual property relating to its antiemetic drug, Kytril, to F. Hoffman LaRoche; (2) to divest SB’s intellectual property rights to manufacture and market ceftazidime (an injectable antibiotic used to treat serious hospital-borne infections) to Abbott Laboratories; (3) to divest SB’s worldwide rights and intellectual property relating to its antiviral drugs, Famvir and Denavir, to Novartis Pharm AG and Novartis Pharmaceuticals Corporation; and (4) to return to Cantab Pharmaceuticals plc all rights to use Cantab’s DISC technology for the development of a prophylactic herpes vaccine. The order also requires the respondents (5) to divest Glaxo’s United States and Canadian Zantac trademark rights to Pfizer; (6) to assign or relinquish all of SB’s relevant intellectual property rights and options to the drug renzapride (used to treat irritable bowel syndrome) to Alizyme plc; (7) to assign all of Glaxo’s relevant intellectual property rights to GI147211C, a topoisomerase I inhibitor (used to treat certain types of cancer), to Gilead Sciences, Inc.; and (8) to assign all of SB’s relevant intellectual property rights and relinquish all options to regain control over frovatriptan (used to treat migraine headaches) to Vernalis Ltd.

Participants

For the Commission: *Jaqueline K. Mendel, Michael R. Moiseyev, David L. Inglefield, David von Nirschl, Michael Barnett, Robert Pickett, Eric Coffman, Ann Malester, Elizabeth Piotrowski, David Reiffen, Leslie Farber, and Daniel O’Brien.*

For the Respondents: *Garrard Beeney, Thomas Leuba, and Daryl Libow, Sullivan & Cromwell.*