

Complaint

IN THE MATTER OF

ELI LILLY and COMPANY

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

*Docket C-4047; File No. 0123214
Complaint, May 8, 2002--Decision, May 8, 2002*

This consent order addresses representations made by Respondent Eli Lilly and Company – a pharmaceutical company that manufactures, markets, and sells drugs such as the anti-depressant medication Prozac, and operates the Prozac.com Web site – through Lilly’s privacy policies, and during the sign-up process for Medi-Messenger, a service that enabled its subscribers to receive individualized email reminders from Lilly concerning their Prozac medication or other matters. The order, among other things, prohibits the respondent from misrepresenting the extent to which it maintains and protects the privacy or confidentiality of any personally identifiable information collected from or about consumers. The order also requires the respondent to implement a four-stage information security program designed to establish and maintain reasonable and appropriate administrative, technical, and physical safeguards to protect consumers’ personal information against any reasonably anticipated threats or hazards to its security, confidentiality, or integrity, and to protect such information against unauthorized access, use, or disclosure.

Participants

For the Commission: *Mamie Kresses, Dean C. Forbes, Heather Hipsley, Mary K. Engle, Louis Silversin, and Gerard R. Butters.*

For the Respondent: *Karen Silverman and J. Thomas Rosch, Latham & Watkins, and Rebecca O. Kendall and Stanley W. Crosley, Eli Lilly.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Eli Lilly and Company, a corporation (“respondent”) has violated the provisions of the Federal Trade Commission Act, and it

Complaint

appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Eli Lilly and Company is an Indiana corporation with its principal office or place of business at Lilly Corporate Center, Indianapolis, Indiana 46285. Respondent, a pharmaceutical company, has advertised and promoted its anti-depressant medication, Prozac, through the company's Web sites www.prozac.com and www.lilly.com.
2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent promotes its Prozac.com Web site as "Your Guide to Evaluating and Recovering from Depression." From March 15, 2000 until June 22, 2001, respondent advertised, promoted, and marketed via www.Prozac.com and www.Lilly.com an email reminder service known as "Medi-messenger." Consumers who utilized the Medi-messenger service could design and receive personal email reminder messages from respondent concerning their medication or other matters. Once a visitor registered for Medi-messenger, the reminder messages were automatically emailed from Prozac.com to the subscriber at the email address s/he provided, and according to the schedule established by the subscriber.
4. Subscribers to the Medi-messenger service registered by providing an email address, a password, the text of the reminder message they wanted to receive, and the schedule for sending the reminder messages. (Complaint Exhibit A, pp.1-4). After providing information to register for Medi-messenger, the subscriber was invited to view the Prozac.com "Privacy Statement" via a hyperlink, which was positioned just above the "Submit" and "Reset" buttons. (Complaint Exhibit A, p.4)
5. Respondent has disseminated or has caused to be disseminated privacy policies on Prozac.com and Lilly.com, including but not

Complaint

necessarily limited to the attached Exhibits B and C. These privacy policies contain the following statements regarding the privacy and confidentiality of personal information collected through respondent's Web sites:

A. **"Your Privacy**

This Web site has been created to provide our visitors with information on certain medical conditions. Eli Lilly and Company respects the privacy of visitors to its Web sites, and we feel it is important to maintain our guests' privacy as they take advantage of this resource. As a result, we have developed this privacy code.

* * *

We will use Your Information to respond to requests you may make of us, and from time to time, we may refer to Your Information to better understand your needs and how we can improve our Web sites, products and services. Any and all uses would comply with all applicable laws. We may also use Your Information to contact you. However, the provision of Your Information will only be necessary if you choose to use or receive certain tools or services, such as a newsletter or our medical reminder service.

* * *

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer; however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above). These security measures also help us to honor your choices for the use of Your Information."

Complaint

Exhibit B: “Prozac.com | Privacy Statement,”
http://www.prozac.com/your_privacy.jsp; and
https://secure.prozac.com/your_privacy.jsp.

B. “privacy

Eli Lilly and Company respects the privacy of visitors to its websites, and we feel it is important to maintain our guests’ privacy as they take advantage of this resource. As a result, we have developed this privacy code.

* * *

We will use Your Information to respond to requests you may make of us, and from time to time, we may refer to Your Information to better understand your needs and how we can improve our Web sites, products and services. Any and all uses would comply with all applicable laws. We may also use Your Information to contact you in connection with your requests.

* * *

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer; however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above).”

Exhibit C: “Lilly: Privacy,” <http://www.lilly.com/privacy.html>.

6. On June 27, 2001, at respondent’s direction, an Eli Lilly employee sent an email message to Medi-messenger subscribers announcing the termination of the Medi-messenger service. To do this, the employee created a new computer program to access subscribers’ email addresses and send them the email. The June

Complaint

27th email disclosed the email addresses of all 669 Medi-messenger subscribers to each individual subscriber by including all of the recipients' email addresses within the "To:" line of the message. (Complaint Exhibit D, *email addresses redacted from original*). By including the email addresses of all Medi-messenger subscribers within the June 27th email message, respondent unintentionally disclosed personal information provided to it by consumers in connection with their use of the Prozac.com Web site.

7. The June 27th disclosure of personal information resulted from respondent's failure to maintain or implement internal measures appropriate under the circumstances to protect sensitive consumer information. For example, respondent failed to provide appropriate training for its employees regarding consumer privacy and information security; failed to provide appropriate oversight and assistance for the employee who sent out the email, who had no prior experience in creating, testing, or implementing the computer program used; and failed to implement appropriate checks and controls on the process, such as reviewing the computer program with experienced personnel and pretesting the program internally before sending out the email. Respondent's failure to implement appropriate measures also violated certain of its own written policies.

8. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it employs measures and takes steps appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information obtained from or about consumers through its Prozac.com and Lilly.com Web sites.

9. In truth and in fact, as described in Paragraphs 6 and 7, respondent has not employed measures and has not taken steps appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information obtained from or about consumers through its Prozac.com and Lilly.com Web

Complaint

sites. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondent 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 eighth day of May, 2002, has issued this complaint against respondent.

By the Commission.

Prozac® | Recovery Tools | MediMessenger - Microsoft Internet Explorer provided by Eli Lilly and Company(20010711.01)

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Messenger

Address D:\My Documents\prozacSourceCode\webroot\4_rec\4rec200.htm

PROZAC®

fluoxetine hydrochloride

Disease Information About Prozac Taking Control Recovery Tools Caring for Others Community

Home Prozac in the News Contact Us Survey Visitor Poll Safety Product Label Search Site Map

Recovery Tools

- Self Assessment & Tracking
- MediMessenger
- Patient Associations & Resources
- Newsletter

MediMessenger

This useful and free reminder service can keep your life on schedule. Use this tool to remind yourself to take/refill your medication, take a walk, schedule appointments or even remind yourself to have a great day!

[Click here](#) to sign-up, or if you have already signed-up, insert your information below to update your account.

Username or Alias:

Password:

Please note: Username and Password are case-sensitive for your security e.g. Jane Doe

File Edit View Favorites Tools Help



Address [D:\My Documents\prozacSourceCode\webroot\4_rec\4rec201.htm](#) Go Links

PROZAC®

fluoxetine hydrochloride

[Disease Information](#) [About Prozac](#) [Taking Control](#) [Recovery Tools](#) [Caring for Others](#) [Community](#)

[Home](#) [Prozac in the News](#) [Contact Us](#) [Survey](#) [Visitor Poll](#) [Safety](#) [Product Label](#) [Search](#) [Site Map](#)

Recovery Tools

[Self-Assessment
& Tracking](#)

[MediMessenger](#)

[Patient Associations
& Resources](#)

[Newsletter](#)

MediMessenger

Let us remind you!

Sign up below to receive daily, weekly and monthly reminders for any task using our e-mail reminder service.

Username or Alias :

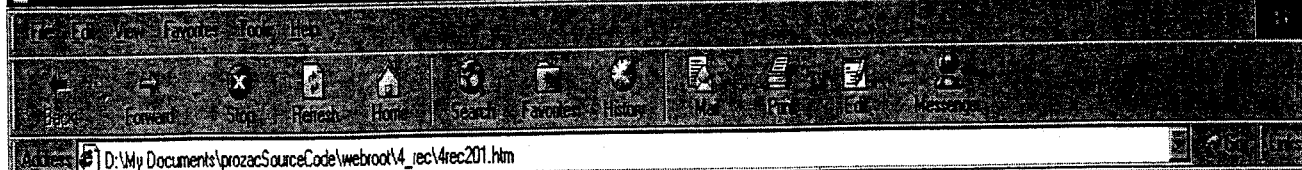
Password :

Confirm Password :

E-mail Address :

Please note that Username and password are case sensitive for your security. e.g. Jane Doe.
Be sure to memorize your information or write it down and keep it in a safe place to make any changes. You can use the same username and password to sign up for the Zung Tracking Tool.
Enter the task and the frequency of the task. If you enter a medication, set the refill frequency, otherwise select None.



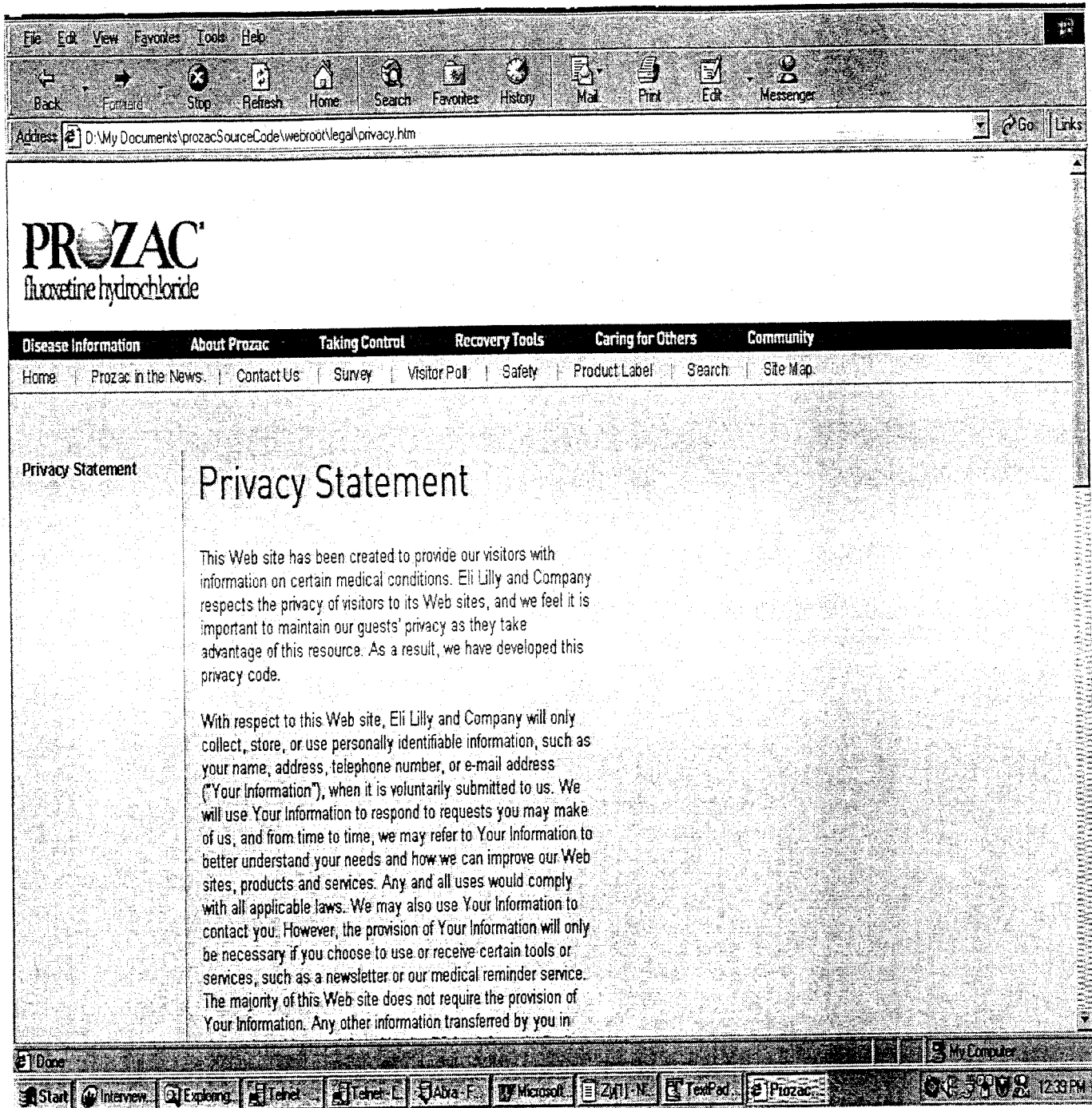
**Other ideas to Schedule:**

- Take your medication.
- Refill your prescription.
- Schedule a doctor's appointment.
- Call someone you haven't talked to in a while.
- Have lunch with a friend.
- Meditate.

Reminder	Frequency	Refill Frequency
	Daily	Daily
	Daily	Daily
	Daily	Daily
	Daily	Daily
	Daily	Daily
	Daily	Daily

[Click here to view Eli Lilly Privacy Statement](#)





File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Messenger

Address <D:\My Documents\prozacSourceCode\webroot\legal\privacy.htm> Go Links

connection with your visit to this site ("Other Information" - i.e., information that cannot be used to identify you) may be included in databases owned and maintained by Eli Lilly and Company or its agents. Lilly retains all rights to these databases and the information contained in them.

Our Web sites, like nearly all sites on the Internet, will use Other Information and pool it with information that tracks the total number of visitors to our site, the number of visitors to each page of our site, and the domain names of our visitors' Internet service providers. However, it is important to note that no personally identifiable information is available or used in this process.

In addition, some of our Web sites use a technology called "cookies". A cookie is a piece of information that the computer that hosts our site gives to your computer (actually to your browser) when you access a Web site. Our cookies provide additional functionality to the site and help us analyze site usage more accurately. For instance, our site may set a cookie on your browser that keeps you from needing to remember and enter a password more than once during a visit to the site. In all cases in which we use cookies, we will not collect personally identifiable information without your permission.

We are committed to protecting the privacy of children. You should be aware that this site is not intended for, or designed to attract, children under the age of 13. We do not collect personally identifiable information from any person we actually know is a child under the age of 13.

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer, however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above). These security measures also help us to honor your choices for the use of Your Information.

#1 Done

Start Interview Exploring Telnet Telnet L Abra F Microsoft ZITI N Test Pad Prozac My Computer 12:40 PM

File Edit View Favorites Tools Help



Address D:\My Documents\prozacSourceCode\webroot\legal\privacy.htm

We are committed to protecting the privacy of children. You should be aware that this site is not intended for, or designed to attract, children under the age of 13. We do not collect personally identifiable information from any person we actually know is a child under the age of 13.

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer, however, to take advantage of this, your browser must support encryption protection (found in Internet Explorer release 3.0 and above). These security measures also help us to honor your choices for the use of Your Information.

As a convenience to our visitors, this Web site currently contains links to a number of sites that we believe may offer useful information. The policies and procedures we described here do not apply to those sites. We suggest contacting those sites directly for information on their privacy, security, data collection, and distribution policies.

We may update this Web site Privacy Policy from time to time. When we do update it, for your convenience, we will make the updated policy available on this page.

[Back to top](#)

Could YOU Be Depressed?
Take this test. [Click Here.](#)

Send this page to a friend. [Click Here.](#)

This information is intended for U.S. residents only. To visit the *Healthcare Professional* site [click here](#).

FL-14317-10126552 Copyright 2000, Eli Lilly and Company.

All rights reserved. PROZAC is a registered trademark of Eli Lilly and Company. [Privacy Statement](#).

Lilly

File



[Home](#)[Disease Information](#)[How Prozac Can Help](#)[Prozac Weekly](#)[Contact Us](#)

Your Privacy

This Web site has been created to provide our visitors with information on certain medical conditions. Eli Lilly and Company respects the privacy of visitors to its Web sites, and we feel it is important to maintain our guests' privacy as they take advantage of this resource. As a result, we have developed this privacy code.

With respect to this Web site, Eli Lilly and Company will only collect, store, or use personally identifiable information, such as your name, address, telephone number, or e-mail address ("Your Information"), when it is voluntarily submitted to us. We will use Your Information to respond to requests you may make of us, and from time to time, we may refer to Your Information to better understand your needs and how we can improve our Web sites, products and services. Any and all uses would comply with all applicable laws. We may also use Your Information to contact you. However, the provision of Your Information will only be necessary if you choose to use or receive certain tools or services, such as a newsletter or our medical reminder service. The majority of this Web site does not require the provision of Your Information. Any other information transferred by you in connection with your visit to this site ("Other Information" – i.e., information that cannot be used to identify you) may be included in databases owned and maintained by Eli Lilly and Company or its agents. Lilly retains all rights to these databases and the information contained in them.

Our Web sites, like nearly all sites on the Internet, will use Other Information and pool it with information that tracks the total number of visitors to our site, the number of visitors to each page of our site, and the domain names of our visitors' Internet service providers. However, it is important to note that no personally identifiable information is available or used in this process.

In addition, some of our Web sites use a technology called "cookies". A cookie is a piece of information that the computer that hosts our site gives to your computer (actually to your browser) when you access a Web site. Our cookies provide additional functionality to the site and help us analyze site usage more accurately. For instance, our site may set a cookie on your browser that keeps you from needing to remember and enter a password more than once during a visit to the site. In all cases in which we use cookies, we will not collect personally identifiable information without your permission.

We are committed to protecting the privacy of children. You should be aware that this site is not intended for, or designed to attract, children under the age of 13. We do not collect personally identifiable information from any person we actually know is a child under the age of 13.

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer; however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above). These security measures also help us to honor your choices for the use of Your Information.

As a convenience to our visitors, this Web site currently contains links to a number of sites that we believe may offer useful information. The policies and procedures we described here do not apply to those sites. We suggest contacting those sites directly for information on their privacy, security, data collection, and distribution policies.

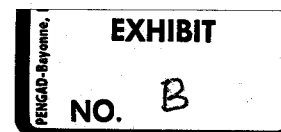
We may update this Web site Privacy Policy from time to time. When we do update it, for your convenience, we will make the updated policy available on this page.

[Zung Depression Self-Assessment Test](#)[Prozac Product/Patient Prescribing Information](#)[Safety Information](#)[Your](#)

Generic or brand name? Are there differences?
[Information about generic fluoxetine](#)

[site map](#)[Prozac.com en Español](#)

FL-14317-10126552 Copyright 2001, Eli Lilly and Company.
All rights reserved. PROZAC is a registered trademark of Eli Lilly and Company.
This site is intended for U.S. Residents only. To visit the Healthcare Professional site, [click here](#)





[health info](#) [alliances](#) [news](#) [careers](#) [about us](#) [global](#) [contact](#) [home](#)

privacy



Eli Lilly and Company respects the privacy of visitors to its websites, and we feel it is important to maintain our guests' privacy as they take advantage of this resource. As a result, we have developed this privacy code.

With respect to this website, Eli Lilly and Company and its agents will only collect, store or use personally identifiable information, such as your name, address, social security number, stockholder account number, or e-mail address ("Your Information"), when it is voluntarily submitted to us. We will use Your Information to respond to requests you may make of us, and from time to time, we may refer to Your Information to better understand your needs and how we can improve our websites, products and services. Any and all uses would comply with all applicable laws. We may also use Your Information to contact you in connection with your requests. Any other information transferred by you in connection with your visit to this site ("Other Information" -- i.e., information that cannot be used to identify you) may be included in databases owned and maintained by Eli Lilly and Company or its agents. Lilly retains all rights to these databases and the information contained in them.

Our web sites, like nearly all sites on the internet, will use Other Information and pool it with information tracking the total number of visitors to our site, the number of visitors to each page of our site, and the domain names of our visitors' Internet service providers. However, it is important to note that no personally identifiable information is available or used in this process.

In addition, some of our websites use a technology called "cookies". A cookie is a piece of information that the computer that hosts our site gives to your computer (actually to your browser) when you access a website. Our cookies help provide additional functionality to the site or to help us analyze site usage more accurately. For instance, our site may set a cookie on your browser that keeps you from needing to remember and then enter a password more than once during a visit to the site. In all cases in which we use cookies, we will not collect personally identifiable information except with your permission.

Our websites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer; however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above).

As a convenience to our visitors, this website currently contains links to a number of sites that we believe may offer useful information. The policies and procedures we described here do not apply to those sites. We suggest contacting those sites directly for information on their privacy, security, data collection and distribution policies.

We may update this Website Privacy Policy from time to time. When we do update it, however, for your convenience, we will make the updated policy available on this page.

PENGAD-Bayome, I

EXHIBIT

NO.

C

Copyright © 2001 Eli Lilly and Company. All rights reserved. [Search](#) | [Site Map](#)

From:
Sent:
To:

mail_usmail-welcome@lilly.com
Wednesday, June 27, 2001 8:37 PM

[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@home.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@hotmail.com;
[REDACTED]@excite.com; [REDACTED]@aol.com; [REDACTED]@hotmail.com; [REDACTED]@yahoo.com; [REDACTED]@yahoo.com;
[REDACTED]@hotmail.com; [REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@lilly.com; [REDACTED]@aol.com; [REDACTED]@compaq.net;
[REDACTED]@aol.com; [REDACTED]@earthlink.net; [REDACTED]@chevron.com; [REDACTED]@aol.com;
[REDACTED]@earthlink.net; [REDACTED]@hotmail.com; [REDACTED]@hotmail.com;
[REDACTED]@yahoo.com; [REDACTED]@aol.com; [REDACTED]@earthlink.net; [REDACTED]@aol.com;
[REDACTED]@home.com; [REDACTED]@mindspring.com; [REDACTED]@somewhere.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@home.com; [REDACTED]@aol.com;
[REDACTED]@msn.com; [REDACTED]@earthlink.net; [REDACTED]@lilly.com; [REDACTED]@webtv.net;
[REDACTED]@hotmail.com; [REDACTED]@yahoo.com; [REDACTED]@hotmail.com; [REDACTED]@aol.com;
[REDACTED]@aol.com; [REDACTED]@home.com; [REDACTED]@aol.com; [REDACTED]@email.uc.edu;
[REDACTED]@aol.com; [REDACTED]@earthlink.net; [REDACTED]@aol.com; [REDACTED]@attglobal.net;
[REDACTED]@hotmail.com; [REDACTED]@aol.com; [REDACTED]@juno.com;
[REDACTED]@hotmail.com; [REDACTED]@cs.com; [REDACTED]@att.net.mx;
[REDACTED]@icqmail.com; [REDACTED]@home.com; [REDACTED]@juno.com; [REDACTED]@go.com;
[REDACTED]@yahoo.com; [REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@dotnow.com;
[REDACTED]@org; [REDACTED]@swbell.net; [REDACTED]@aol.com; [REDACTED]@hotmail.com;
[REDACTED]@gateway.net; [REDACTED]@mail.state.mo.us; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@worldnet.att.net; [REDACTED]@hotmail.com; [REDACTED]@cs.com;
[REDACTED]@webtv.net; [REDACTED]@hotmail.com; [REDACTED]@prismnet.com; [REDACTED]@aol.com;
[REDACTED]@yahoo.com; [REDACTED]@yahoo.com; [REDACTED]@aol.com;
[REDACTED]@mindspring.com; [REDACTED]@lineone.net; [REDACTED]@trilogy.com;
[REDACTED]@earthlink.net; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@hotmail.com; [REDACTED]@yahoo.com; [REDACTED]@fast.net;
[REDACTED]@hotmail.com; [REDACTED]@aol.com; [REDACTED]@hotmail.com;
[REDACTED]@peoplepc.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@mail.pol.net; [REDACTED]@aol.com; [REDACTED]@webtv.net; [REDACTED]@yahoo.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@home.com;
[REDACTED]@cs.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@webtv.net; [REDACTED]@aol.com; [REDACTED]@hotmail.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@earthlink.net;
[REDACTED]@yahoo.co.uk; [REDACTED]@ycos.com; [REDACTED]@hotmail.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@cs.com;
[REDACTED]@hotmail.com; [REDACTED]@onebox.com; [REDACTED]@communications.com;
[REDACTED]@uiuc.edu; [REDACTED]@cableinet.co.uk; [REDACTED]@aol.com;
[REDACTED]@aol.com; [REDACTED]@yahoo.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@cs.com; [REDACTED]@hotmail.com; [REDACTED]@aol.com;
[REDACTED]@hotmail.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@aol.com; [REDACTED]@juno.com; [REDACTED]@aol.com; [REDACTED]@hotmail.com;
[REDACTED]@aol.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@aol.com; [REDACTED]@webtv.net; [REDACTED]@hotmail.com; [REDACTED]@aol.com;
[REDACTED]@hotmail.com; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@aol.com; [REDACTED]@ggg.edu; [REDACTED]@swbell.net; [REDACTED]@yahoo.com;
[REDACTED]@aol.com; [REDACTED]@ycos.com; [REDACTED]@pacbell.net; [REDACTED]@hotmail.com;
[REDACTED]@aol.com; [REDACTED]@aol.cpm; [REDACTED]@aol.com; [REDACTED]@aol.com;
[REDACTED]@net; [REDACTED]@hotmail.com; [REDACTED]@excite.com;

EXHIBIT

NO. D

@peoplepc.com; @yahoo.com; @aol.com;
@aol.com; @yahoo.com; @hotmail.com;
.com; @aol.com; @aol.com;
@hotmail.com; @aol.com; .com; @
@aol.com; net; @axom.com; @aol.com;
@tesco.net; @hotmail.com; @hotmail.com;
@juno.com; @aol.com; @yahoo.com; @yahoo.com;
@aol.com; .net; @hotmail.com; @
@aol.com; @aol.com; @hotmail.com; .net;
@hotmail.com; @aol.com; @yahoo.com;
yahoo.com; @earthlink.net; v@yahoo.com;
@bellsouth.net; @swt.edu; @pg.com;
@yahoo.com; .com; @bellatlantic.net;
@hotmail.com; @aol.com; @aol.com;
@aol.com; @hotmail.com; @providence.edu; @aol.com;
@yahoo.com; cs.com; @att.net; @earthlink.net;
.com; @dixnet.net; @hotmail.com;
@yahoo.com; @msn.com; @hotmail.com;
@hotmail.com; @aol.com; lilly.com;
@hotmail.com; @aol.com;
@earthlink.net; @aol.com; avantel.net;
@hotmail.com; @msn.com; @juno.com;
@bellatlantic.net; @hotmail.com; @uniserve.com;
@aol.com; @webtv.net; @aol.com;
@home.com;
@myhotjobs.com; @island.net;
@yahoo.com; @msn.com; @hotmail.com;
@aol.com; @aol.com; @yahoo.com;
@webtv.net; @sport.r.com; @gci.net; @hotmail.com;
@aol.com; @lilly.com; @hotmail.com;
@cmich.edu; @aol.com; @orange.net;
@shawneelink.net; @aol.com; @cs.com; @lilly.com;
@hotmail.com; s@yahoo.com; @hotmail.com;
@aol.com; @hotmail.com; @lilly.com; @yahoo.com;
@aol.com; home.com; com;
@yahoo.com; @aol.com; @aol.com; home.com;
@hotmail.com; home.com; co.za; .com;
@home.com; @aol.com; @hotmail.com;
@aol.com; .net; .com; @hotmail.com;
@cs.com; @rightplace.org; @aol.com; @hotmail.com;
@aol.com; @hotmail.com; @hotmail.com;
@yahoo.com; @aol.com; @netscape.net; LILLY.COM;
@hotmail.com; @aol.com; @yahoo.com; @juno.com;
com; @aol.com; home.com; @twave.net;
@usa.dupont.com; com; @hotmail.com;
net; @aol.com; @aol.com; @aol.com;
@maerwin.net; @aol.com; @hotmail.com; @aol.com;
@yahoo.com; @aol.com; @netzero.net;
@aol.com; @yahoo.com; @aol.com;
@yahoo.com; @medconsult.com; @aol.com;
@funb.com; @hotmail.com; @hotmail.com;
k@mac.com; .com; baxite.com;
@hotmail.com; 7@cs.com; @hotmail.com; @yahoo.com;
@home.com; @aol.com; @aol.com; @aol.com;
@earthlink.net; @hotmail.com; @juno.com; @sec.gov;

[illegible]

Subject: Medi-Messenger

Dear Medi-Messenger User:

We're listening! This week Eli Lilly and Company relaunched Prozac.com with a new navigation and feel. Based upon feedback from consumers like you, we have discontinued our Medi-Messenger e-mail reminder service. We are appreciative of your comments, and hope this does not cause any inconvenience to those of you who were using this feature.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comment received, 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 Eli Lilly and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office or place of business at Lilly Corporate Center, Indianapolis, Indiana 46285.

Decision and Order

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

ORDER

DEFINITIONS

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

1. “Personally identifiable information” or “personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s email address; (d) a telephone number; (e) a social security number; (f) an Internet Protocol (“IP”) address or host name that identifies an individual consumer; (g) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; or (h) or any information that is combined with (a) through (g) above. Provided that, this definition shall not include personally identifiable information about physicians, nurses, or other health care professionals, or their staff, that is collected in connection with such persons’ professional duties.

2. Unless otherwise specified, “respondent” shall mean Eli Lilly and Company, its successors and assigns and its officers, agents, representatives, and employees acting within the scope of their authority on behalf of, or in active concert or participation with, Eli Lilly and Company.

3. “Lilly USA division” shall mean Lilly USA, a division of Eli Lilly and Company, and Lilly USA's successors, assigns, officers, representatives, agents, employees, and other entities responsible for the development, control, support, or oversight of U.S. product or service sales, advertising, or marketing, information management,

Decision and Order

or information technology. Provided that, the Lilly USA division shall be treated as a corporation under the control of Eli Lilly and Company for the purpose of determining whether any other entity is Lilly USA division's successor or assign.

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

I.

IT IS ORDERED that respondent shall not misrepresent in any manner, expressly or by implication, the extent to which it maintains and protects the privacy or confidentiality of any personally identifiable information collected from or about consumers, in connection with the advertising, marketing, offering for sale or sale, in or affecting commerce, of any pharmaceutical, medical or other health-related product or service by respondent's Lilly USA division, directly or through any corporation, subsidiary, division, or other entity.

II.

IT IS FURTHER ORDERED that respondent shall establish and maintain an information security program for the protection of personally identifiable information collected from or about consumers in connection with the advertising, marketing, offering for sale, or sale of any pharmaceutical, medical, or other health-related product or service, in or affecting commerce, by respondent's Lilly USA division, directly or through any corporation, subsidiary, division, or other entity. Such program shall consist of:

- A. designating appropriate personnel to coordinate and oversee the program;
- B. identifying reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information, including any such risks posed by lack of training, and addressing these risks in each relevant area of its operations, whether performed by employees or

Decision and Order

agents, including: (i) management and training of personnel; (ii) information systems for the processing, storage, transmission, or disposal of personal information; and (iii) prevention and response to attacks, intrusions, unauthorized access, or other information systems failures;

- C. conducting an annual written review by qualified persons, within ninety (90) days after the date of service of this order and yearly thereafter, which review shall monitor and document compliance with the program, evaluate the program's effectiveness, and recommend changes to it; and
- D. adjusting the program in light of any findings and recommendations resulting from reviews or ongoing monitoring, and in light of any material changes to its operations that affect the program.

III.

IT IS FURTHER ORDERED that respondent shall for a period of five (5) years after the date of service of this order maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of the following documents relating to compliance with Parts I and II of this order by respondent's Lilly USA division, directly or through any corporation, subsidiary, division, or other entity:

- A. a sample copy of each different consumer-targeted print, broadcast, cable, or Internet advertisement, promotion, information collection form, Web page, screen, email message, or other document containing any representation regarding the Lilly USA division's collection, use, and security of personal information from or about consumers. Each Web page copy shall be dated and contain the full URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web. Provided, however, that after

Decision and Order

creation of any Web page or screen in compliance with this order, the Lilly USA division shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect its compliance obligations under this order;

- B. all reports, studies, reviews, audits, audit trails, policies, training materials, and plans, whether prepared by or on behalf of respondent, relating to the Lilly USA division's compliance with the information security program required by Part II of this order; and
- C. any documents, whether prepared by or on behalf of the Lilly USA division, that contradict, qualify, or call into question its compliance with the information security program required by Part II of this order, maintained through reasonable efforts in accordance with a document retention program.

IV.

IT IS FURTHER ORDERED that respondent Eli Lilly and Company, and its successors and assigns, 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 relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Eli Lilly and Company, 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, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary,

Decision and Order

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. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent Eli Lilly and Company, and its successors and assigns, shall within one hundred and twenty (120) days after 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. This report shall include a copy of the initial annual review required by Part II.C of this order.

VII.

This order will terminate on May 8, 2022, 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 of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect 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.

Decision and Order

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.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Eli Lilly and Company (“Lilly”).

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 and take appropriate action or make final the agreement’s proposed order.

Lilly is a pharmaceutical company that manufactures, markets, and sells drugs, including the anti-depressant medication Prozac. To market Prozac, among other things Lilly operates the Prozac.com Web site, which the company promotes as “Your Guide to Evaluating and Recovering from Depression.” The Prozac.com site, like Lilly.com and several of Lilly’s other product Web sites, collects personal information from visitors.

From March 2000 through June 2001, Lilly offered through Prozac.com a service called “Medi-Messenger,” which enabled its subscribers to receive individualized email reminders from Lilly concerning their Prozac medication or other matters. On June 27, 2001, Lilly sent a form email to subscribers to the service, which disclosed all of the subscribers’ email addresses to each individual subscriber by including all of their addresses within the “To:” entry of the message.

This matter concerns allegedly false or misleading representations, made through Lilly’s privacy policies and during the sign-up process for Medi-Messenger. The Commission’s proposed complaint alleges that Lilly claimed that it employs measures and takes steps appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information obtained from or about consumers through its

Analysis

Prozac.com and Lilly.com Web sites, when in fact Lilly had not employed such measures and had not taken such steps.

As set forth in the complaint, Lilly's unintentional June 27th disclosure of Medi-Messenger subscribers' personal information (i.e., email addresses) resulted from its failure to maintain or implement internal measures appropriate under the circumstances to protect sensitive consumer information. For example, Lilly failed to provide appropriate training for its employees regarding consumer privacy and information security; failed to provide appropriate oversight and assistance for the employee who sent out the email, who had no prior experience in creating, testing, or implementing the computer program used; and failed to implement appropriate checks and controls on the process, such as reviewing the computer program with experienced personnel and pretesting the program internally before sending out the email. Lilly's failure to implement appropriate measures also violated certain of its own written policies.

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

The proposed order applies to the collection of personal information from or about consumers in connection with the advertising, marketing, offering for sale, or sale of any pharmaceutical, medical, or other health-related product or service by Lilly's USA division.

Part I of the proposed order prohibits misrepresentations regarding the extent to which Lilly maintains and protects the privacy or confidentiality of any personally identifiable information collected from or about consumers.

Part II of the proposed order requires Lilly to implement a four-stage information security program designed to establish and maintain reasonable and appropriate administrative, technical, and physical safeguards to protect consumers' personal information against any reasonably anticipated threats or hazards to its

Analysis

security, confidentiality, or integrity, and to protect such information against unauthorized access, use, or disclosure. Specifically, Part II requires Lilly to:

- designate appropriate personnel to coordinate and oversee the program;
- identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information, including any such risks posed by lack of training, and to address these risks in each relevant area of its operations, whether performed by employees or agents, including: (i) management and training of personnel; (ii) information systems for the processing, storage, transmission, or disposal of personal information; and (iii) prevention and response to attacks, intrusions, unauthorized access, or other information systems failures;
- conduct an annual written review by qualified persons, within ninety (90) days after the date of service of the order and yearly thereafter, which review shall monitor and document compliance with the program, evaluate the program's effectiveness, and recommend changes to it; and
- adjust the program in light of any findings and recommendations resulting from reviews or ongoing monitoring, and in light of any material changes to Lilly's operations that affect the program.

Parts III through VI of the proposed order are reporting and compliance provisions. Part III requires Lilly's retention of materials relating to its privacy and security representations and to its compliance with the order's information security program. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates compliance reports, including a copy of the initial annual review required by Part II.C within one hundred and twenty (120) days after service of the order. Part

Analysis

VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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 their terms in any way.

Statement

Concurring Statement of Commissioner Orson Swindle

I am pleased with the consent agreement that the Commission has reached with Eli Lilly and Company. Lilly's unfortunate and unintended disclosure of prescription drug users' personal information has given us all the opportunity to evaluate how to improve upon security practices for confidential information. Lilly should be respected for its long-standing efforts in development of its privacy practices, its acceptance of responsibility for the internal failures that resulted in the alleged violation of its privacy policy, and its willingness to take appropriate steps to correct those mistakes. I appreciate the company's leadership in cooperating with us to improve its security measures, and I believe the firm will fully carry out its commitments under the proposed order. Lilly's responsiveness and its efforts to improve corporate privacy practices can be a model for others to follow.

Complaint

IN THE MATTER OF

**OBSTETRICS AND GYNECOLOGY MEDICAL
CORPORATION OF NAPA VALLEY, ET AL.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4048; File No. 0110153
Complaint, May 14, 2002--Decision, May 14, 2002*

This consent order addresses agreements among Respondent Obstetrics & Gynecology Medical Corp. of Napa Valley ("OGMC") – a for-profit corporation and a single-specialty independent practice association ("IPA") composed of virtually all of the OB/GYNs with active medical staff privileges at the two general acute care hospitals in Napa County, California – and its Respondent shareholders concerning prices and other terms of dealing with payors. The order, among other things, prohibits the respondents from entering into, participating, or facilitating: (1) any agreement to negotiate on behalf of any physicians with any payor or provider; (2) any agreement to deal or refuse to deal with any payor or provider; or (3) any agreement regarding any term on which any physicians deal, or are willing to deal, with any payor or provider. The order also prohibits the respondents from attempting to engage in – or from encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in – any action that would violate the order. In addition, the order requires Respondent OGMC to dissolve itself.

Participants

For the Commission: *Sylvia Kundig, Lisa Rosenthal, Thomas Dahdouh, John P. Wiegand, Erika Wodinsky, Jeffrey Klurfeld, Rendell A. Davis, Jr., Daniel P. Ducore, Louis Silvia, Jr., Thomas R. Iosso and Mary T. Coleman.*

For the Respondent: *Frank E. Gamma, Glenn Stover, and Joel S. Goldman, Hanson, Bridgett, Marcus, Vlahos & Rudy.*

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