

Complaint

IN THE MATTER OF

SHELL OIL COMPANY, 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-4059; File No. 0210123**Complaint, September 27, 2002--Decision, November 18, 2002*

This consent order addresses the acquisition by the Royal Dutch/Shell Group of Companies, through Respondent Shell Oil Company – engaged in almost all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing – of Respondent Pennzoil-Quaker State Company, which manufactures and markets products such as lubricants, branded and unbranded motor oils, base oil, and other automotive and specialty industrial products. The order, among other things, requires the respondents to divest Pennzoil’s 50 percent interest in Excel Paralubes – a joint venture with Conoco Inc. that produces paraffinic base oil, the principal component of finished lubricants used for passenger car motor oil, heavy duty engine oil, automatic transmission fluid, and other lubricant products – to an acquirer approved by the Commission. The order also prohibits the respondents from divesting the Pennzoil Excel Paralubes interest to Conoco. In addition, the order requires the respondents to freeze at approximately current levels Pennzoil’s right to obtain certain base oil supply under a contract with ExxonMobil, and – at the option of the acquirer of the Excel Paralubes interest, and as approved by the Commission – to purchase Group II base oil from the acquirer for up to one year. An accompanying Order to Hold Separate requires the respondents to hold separate and maintain the assets to be divested, pending their divestiture.

Participants

For the Commission: *Dennis F. Johnson, Marc W. Schneider, Barbara K. Shapiro, Patricia V. Galvan, Geary Gessler, Mohsin Syed, Phillip L. Broyles, Eric D. Rohlck, Elizabeth A. Piotrowski, Daniel P. Ducore, Jeffrey Fischer and Mary T. Coleman.*

For the Respondents: *Steve Newborn and Laura Wilkinson, Clifford Chance Rogers & Wells, and Rufus Oliver, Baker Botts.*

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondent Shell Oil Company (“Shell”) and Respondent Pennzoil-Quaker State Company (“Pennzoil”) have entered into an agreement and plan of merger whereby Shell proposes to acquire all of the outstanding common stock of Pennzoil and to merge with Pennzoil, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

Shell Oil Company

1. Respondent Shell is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Shell Plaza, Houston, Texas 77002.
2. Respondent Shell is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the business of manufacturing, refining, distributing, transporting, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, base oil, motor oil, lubricants, petrochemicals, and other petroleum products. Shell’s affiliates include Equilon Enterprises LLC, which is 100 percent owned by Shell, and Motiva Enterprises LLC, which is 50 percent owned by Shell and 50 percent owned by Saudi Refining Inc.

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

Pennzoil-Quaker State Company

4. Respondent Pennzoil is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at Pennzoil Place, Houston, Texas 77252.
5. Respondent Pennzoil is, and at all times relevant herein has been, engaged, either directly or through affiliates, in the business of manufacturing, refining, distributing and marketing branded and unbranded motor oil, transmission fluid, lubricants, greases, base oil, automotive polishes, automotive chemical products, car care products, and specialty industrial products. Pennzoil’s affiliates include Excel Paralubes, a joint venture that is 50 percent owned by Pennzoil and 50 percent owned by Conoco Inc.
6. Respondent Pennzoil is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED MERGER

7. Pursuant to an agreement and plan of merger dated March 25, 2002, Shell intends to acquire all of the outstanding voting securities of Pennzoil and to merge Pennzoil with a wholly-owned subsidiary of Shell.

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III. TRADE AND COMMERCE

A. Relevant Product Market

8. Paraffinic base oil is a refined petroleum product that is the principal component, or “basestock,” of finished lubricant products used for a variety of applications, including passenger car motor oil, heavy duty engine oil, automatic transmission fluid, and other lubricants.
9. Paraffinic base oil is divided by the American Petroleum Institute into three groups (Groups I, II and III) based on differences in sulfur content, saturates level, and viscosity index. Group II paraffinic base oil has less than 0.03% sulfur by weight, more than 90% saturates by weight, and a viscosity index ranging from 80 to 120. Motor oil blenders need Group II paraffinic base oil in order to meet the performance standards necessary for many of today’s lubricants. Group II paraffinic base oil will also be necessary for the production of other lubricants as new performance standards are adopted. If the price of Group II paraffinic base oil were to increase by 5-10%, blenders of motor oil and other lubricants would not substitute to other products in sufficient volume to make the price increase unprofitable.
10. A relevant line of commerce (*i.e.*, product market) in which to analyze the effects of the proposed merger is the refining and marketing of Group II paraffinic base oil.

B. Relevant Geographic Market

11. A relevant section of the country (*i.e.*, geographic market) in which to analyze the proposed merger is the United States and Canada, where the merger would reduce competition in the refining and marketing of Group II paraffinic base oil. If the price of Group II paraffinic base oil in the United States and Canada were to increase by 5-10%, blenders of motor oil and other lubricants would not switch to sources of

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supply outside that area in sufficient volume to make the price increase unprofitable.

C. Market Structure

12. Through its ownership interests in Motiva Enterprises LLC and Equilon Enterprises LLC, Shell is engaged in the refining and marketing of Group II paraffinic base oil. Through its ownership interest in Excel Paralubes, Pennzoil also is engaged in the refining and marketing of Group II paraffinic base oil. Pennzoil also has a long-term contract with Exxon Mobil Corporation that gives Pennzoil control over additional supplies of Group II base oil that could potentially increase in volume if Exxon Mobil increases Group II production at its Gulf Coast refineries.
13. The refining and marketing of Group II paraffinic base oil in the United States and Canada would be highly concentrated as a result of the proposed merger. Following the merger, Shell would control more than 39% of Group II refining capacity in the United States and Canada. Market concentration, as measured by the Herfindahl-Hirschmann Index, would increase by more than 700 points to a level in excess of 2,300.

D. Entry Conditions

14. Entry into the relevant market in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed merger. Constructing a new refinery or converting an existing Group I refinery to produce Group II base oil is capital intensive, is subject to significant regulatory constraints, and would require several years to accomplish. As a result, new entry would not be able to prevent a 5-10% increase in the price of Group II paraffinic base oil.

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IV. VIOLATIONS CHARGED

15. Shell and Pennzoil are actual and potential competitors in the refining and marketing of Group II paraffinic base oil in the United States and Canada.
16. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between Shell and Pennzoil in the refining and marketing of Group II paraffinic base oil;
 - b. by increasing the likelihood that the combined Shell/Pennzoil will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combined Shell/Pennzoil and other competitors in the refining and marketing of Group II paraffinic base oil;

each of which increases the likelihood that the price of Group II paraffinic base oil will increase in the United States and Canada.

V. STATUTES VIOLATED

17. The proposed merger between Shell and Pennzoil violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of September, 2002, issues its complaint against said Respondents.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger involving Respondent Shell Oil Company and Respondent Pennzoil-Quaker State Company, hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts as set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the

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Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Shell Plaza, Houston, Texas 77002.

2. Respondent Pennzoil-Quaker State Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Pennzoil Place, Houston, Texas 77252.

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

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Atlas” means Atlas Processing Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, including, but not limited to, the Pennzoil Excel Paralubes Interest, subsidiaries, divisions, groups and affiliates controlled by Atlas; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Pennzoil” means Pennzoil-Quaker State Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries (including, but not limited to, Atlas), divisions, groups and affiliates controlled by Pennzoil; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

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- C. “Royal Dutch Petroleum” means the Royal Dutch Petroleum Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Royal Dutch Petroleum; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- D. “Shell” means Shell Oil Company, its officers, directors, employees, agents and representatives, successors, and assigns; its parents (including, but not limited to, Royal Dutch Petroleum), joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell (including, but not limited to, Shell ND Company); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- E. “Respondents” means Shell and Pennzoil, individually and collectively, and the Person resulting from the Merger.
- F. “Acquirer” means the Person who acquires pursuant to Paragraph II or IV of this Order.
- G. “Base Oil” means paraffinic-based lubricant stock of all types, grades, viscosities, and qualities suitable for blending into finished oils (*e.g.*, passenger car motor oil, heavy duty engine oil, automatic transmission fluid, hydraulic fluids, or gear oils).
- H. “Commission” means the Federal Trade Commission.
- I. “Conoco” means Conoco Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 600 North Dairy Ashford, Houston, TX 77079, its officers, directors, employees, agents and representatives, successors, and assigns; its parents, joint

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ventures, subsidiaries, divisions, groups and affiliates controlled by Conoco, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

- J. “Effective Date of Divestiture” means the date on which the applicable divestiture is consummated.
- K. “Excel Paralubes” means the joint venture formed by agreement dated August 2, 1994, between Atlas and Conoco, which produces Base Oil at a facility in Westlake, LA, and which is operated by Conoco.
- L. “Existing Customer Supply Agreements” means all agreements in effect as of the date Respondents execute the Consent Agreement, between Pennzoil and/or Atlas and any Person other than Pennzoil or Atlas for Base Oil produced by Excel Paralubes.
- M. “ExxonMobil/Pennzoil Base Oil Agreement” means the base oil supply agreement dated as of May 4, 2000, between Pennzoil and Exxon Mobil Corporation, and any amendments or successors to such agreement.
- N. “Group II Base Oil” means Base Oil that meets the necessary sulfur, saturates and viscosity index standards for Group II Base Oil established by the American Petroleum Institute, specifically (1) less than 0.03% sulfur by weight, (2) greater than 90% saturates by weight, and (3) viscosity index 80 - 120.
- O. “Merger” means the acquisition of Pennzoil by Shell through the proposed merger of Shell ND Company and Pennzoil as described in the Agreement and Plan of Merger dated as of March 25, 2002, by and among Shell Oil Company, Shell ND Company, and Pennzoil-Quaker State Company.

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- P. “Pennzoil Excel Paralubes Interest” means all of Pennzoil’s and Atlas’s interests in Excel Paralubes, including their partnership interest and all assets, rights, and agreements related thereto, including, but not limited to:
1. All of Pennzoil’s and Atlas’s rights under all contracts and agreements between Pennzoil or Atlas and Excel Paralubes, including, but not limited to, the May 12, 1995, “Lubricating Base Oil Sale and Purchase Agreement between Excel Paralubes and Atlas Processing Company,” and amendments thereto;
 2. All of Pennzoil’s and Atlas’s rights under all contracts and agreements between Pennzoil or Atlas and Conoco relating to Excel Paralubes; and
 3. All Existing Customer Supply Agreements.
- Q. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, within twelve (12) months after the date Respondents execute the Agreement Containing Consent Orders, the Pennzoil Excel Paralubes Interest to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price.
- B. Respondents shall negotiate in good faith with the Acquirer, at Acquirer’s option, an agreement not exceeding one (1) year in length, with no renewal or evergreen rights, for Respondents to purchase from the Acquirer Group II Base

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Oil. Such agreement shall be subject to the prior approval of the Commission.

- C. Respondents shall not, prior to the Effective Date of Divestiture, enter into any agreement or understanding with the Acquirer for Respondents to purchase Group II Base Oil, other than an agreement as provided in Paragraph II.B. of this Order. *Provided, however*, Respondents shall give the Commission ten (10) days prior notice of the implementation of any subsequent agreement between the Acquirer and Respondents for the Respondents to purchase from the Acquirer Group II Base Oil.
- D. Respondents shall not divest the Pennzoil Excel Paralubes Interest to Conoco, and shall take all actions necessary to enforce the Letter Agreement dated August 30, 2002 between Shell and Conoco relating to Excel Paralubes.
- E. The purpose of this Paragraph is to ensure that the Acquirer is a viable independent competitor in the refining, supplying, marketing, and selling of Group II Base Oil produced by Excel Paralubes, without interruption, in the same way in which Pennzoil was engaged at the time of the announcement of the Merger, to ensure that the Acquirer has the option to enter into an agreement to supply Respondents with Group II Base Oil on competitive terms, and to remedy the lessening of competition in Group II Base Oil resulting from the proposed Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall not submit any proposed annual volume forecast under paragraph 2(c) of the ExxonMobil/Pennzoil Base Oil Agreement that proposes or forecasts a request or

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lifting schedule for Group II Base Oil that exceeds 1,500 barrels per day; and

- B. Respondents shall not acquire, exercise any option to acquire, or attempt to acquire, directly or indirectly, Group II Base Oil in excess of 1,500 barrels per day pursuant to the ExxonMobil/Pennzoil Base Oil Agreement.
- C. The purpose of this Paragraph is to ensure that Respondents do not increase their share of the market for Group II Base Oil through additional supply of more than 1,500 barrels per day under the ExxonMobil/Pennzoil Base Oil Agreement, and to remedy the lessening of competition in Group II Base Oil resulting from the proposed Merger as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not, within the time period required by Paragraph II.A. of this Order, fully complied with the obligations specified in Paragraph II of this Order, the Commission may appoint a Trustee to effectuate the divestiture of the Pennzoil Excel Paralubes Interest consistent with the purpose stated in Paragraph II.E.
- B. In the event that the Commission or the United States Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Trustee in such action. Neither the appointment of a Trustee nor a decision not to appoint a Trustee under this Paragraph shall preclude the Commission or the United States Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute

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enforced by the Commission, for any failure by Respondents to comply with this Order.

- C. If a Trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. or IV.B. of this Order, Respondents shall consent to the following terms and conditions regarding the Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select that Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Trustee, Respondents shall be deemed to have consented to the selection of the proposed Trustee.
 2. Subject to the prior approval of the Commission, the Trustee shall have the exclusive power and authority to divest Pennzoil Excel Paralubes Interest as required by this Order.
 3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Trustee, of the court, transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestiture required by this Order.
 4. The Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.C.3. to accomplish the divestiture, which shall be subject to prior approval of the Commission. If, however, at the end of the twelve-month period, the

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Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, the Trustee shall have full and complete access to the personnel, books, records and facilities related to Atlas and Excel Paralubes (except Conoco's confidential information that would not have been available to Respondents) or to any other relevant information as the Trustee may request. Respondents shall develop such financial or other information as the Trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Trustee, by the court.
6. The Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission, *provided, further, however*, that Respondents shall select such entity within five (5)

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business days of receiving notification of the Commission's approval.

7. The Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as necessary to carry out the Trustee's duties and responsibilities. The Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Trustee, by the court, of the account of the Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Trustee's power shall be terminated. The Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Trustee's divesting the assets to be divested.
8. Respondents shall indemnify the Trustee and hold the Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Trustee.
9. If the Trustee ceases to act or fails to act diligently, a substitute Trustee shall be appointed in the same manner as provided in Paragraph IV.C. of this Order.

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10. The Commission or, in the case of a court-appointed Trustee, the court may on its own initiative or at the request of the Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
11. The Trustee shall have no obligation or authority to operate or maintain the assets required to be divested by this Order.
12. The Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Trustee's efforts to accomplish the divestiture.
13. Respondents may require the Trustee to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the trustee from providing any information to the Commission.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondents have fully complied with Paragraphs II and IV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications

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to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs II, III, IV, and VI of this Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in either corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

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- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on November 18, 2012.

By the Commission.

Order

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger involving Respondent Shell Oil Company and Respondent Pennzoil-Quaker State Company, hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts as set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”).

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1. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Shell Plaza, Houston, Texas 77002.

2. Respondent Pennzoil-Quaker State Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Pennzoil Place, Houston, Texas 77252.

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

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions shall apply:

- A. “Atlas” means Atlas Processing Company, its officers, directors, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, (including, but not limited to, the Pennzoil Excel Paralubes Interest), subsidiaries, divisions, groups and affiliates controlled by Atlas; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Pennzoil” means Pennzoil-Quaker State Company, its officers, directors, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries (including, but not limited to, Atlas), divisions, groups and affiliates controlled by Pennzoil; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

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- C. “Royal Dutch Petroleum” means the Royal Dutch Petroleum Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Royal Dutch Petroleum; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- D. “Shell” means Shell Oil Company, its officers, directors, employees, agents and representatives, predecessors, successors, and assigns; its parents (including, but not limited to, Royal Dutch Petroleum Company), joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell (including, but not limited to, Shell ND Company); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- E. “Respondents” means Shell and Pennzoil, individually and collectively, and the Person resulting from the Merger.
- F. “Base Oil” means paraffinic-based lubricant stock of all types, grades, viscosities, and qualities suitable for blending into finished oils (*e.g.* passenger car motor oil, heavy duty engine oil, automatic transmission fluid, hydraulic fluids, or gear oils).
- G. “Commission” means the Federal Trade Commission.
- H. “Conoco” means Conoco Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 600 North Dairy Ashford, Houston, TX 77079, its officers, directors, employees, agents and representatives, successors, and assigns; its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Conoco, and the respective officers,

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directors, employees, agents, representatives, successors,
and assigns of each.

- I. “Effective Date of Divestiture” means the date on which the applicable divestiture is consummated.
- J. “Excel Paralubes” means the joint venture formed by agreement dated August 2, 1994, between Atlas and Conoco, which produces Base Oil at a facility located in Westlake, LA, and which is operated by Conoco.
- K. “Existing Customer Supply Agreements” means all agreements in effect as of the date Respondents execute the Consent Agreement, between Pennzoil and/or Atlas and any Person other than Pennzoil or Atlas for Base Oil produced by Excel Paralubes.
- L. “Held Separate Joint Venture Interest” means the Pennzoil Excel Paralubes Interest and the Joint Venture Interest Employees.
- M. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than ten (10) days after the date the Hold Separate Order becomes final and terminate pursuant to Paragraph V. hereof.
- N. “Joint Venture Interest Employees” means all personnel of Respondents whose primary responsibilities relate to the Held Separate Joint Venture Interest, including but not limited to those Persons listed in Confidential Appendix B, and all Persons who may be hired for the Held Separate Joint Venture Interest.
- O. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not

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limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets. The Held Separate Joint Venture Interest shall be considered a Person separate from Respondents (as defined in this Hold Separate Order and the Decision and Order) for this purpose.

- P. "Merger" means the acquisition of Pennzoil by Shell through the proposed merger of Shell ND Company and Pennzoil as described in the Agreement and Plan of Merger dated as of March 25, 2002, by and among Shell Oil Company, Shell ND Company, and Pennzoil-Quaker State Company
- Q. "Pennzoil Excel Paralubes Interest" means all of Pennzoil's and Atlas's interests in Excel Paralubes, including their partnership interest and all assets, rights, and agreements related thereto, including, but not limited to:
1. All of Pennzoil's and Atlas's rights under all contracts and agreements between Pennzoil or Atlas and Excel Paralubes, including, but not limited to the May 12, 1995, "Lubricating Base Oil Sale and Purchase Agreement between Excel Paralubes and Atlas Processing Company," and amendments thereto;
 2. All of Pennzoil's and Atlas's rights under all contracts and agreements between Pennzoil or Atlas and Conoco relating to Excel Paralubes; and
 3. All Existing Customer Supply Agreements.
- R. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.

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II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondents shall hold the Held Separate Joint Venture Interest separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Joint Venture Interest with all rights, powers, and authority necessary to conduct its business; Respondents shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Joint Venture Interest or any of its operations, or the Hold Separate Trustee, except to the extent that Respondents must exercise direction and control over the Held Separate Joint Venture Interest as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Joint Venture Interest's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Joint Venture Interest.
- B. Until the Effective Date of Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Joint Venture Interest to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purpose of this Hold Separate Order is to: (1) preserve the Held Separate Joint Venture Interest as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Material

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Confidential Information is exchanged between Respondents and the Held Separate Joint Venture Interest, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Merger.

- D. Respondent shall hold the Held Separate Joint Venture Interest separate, apart, and independent on the following terms and conditions:
1. Thomas H. Reilly shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondents and attached as Confidential Appendix A (“Trustee Agreement”).
 - a. The Trustee Agreement shall require that, no later than five (5) days after this Hold Separate Order becomes final, Respondents transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
 - b. No later than five (5) days after this Hold Separate Order becomes final, Respondents shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
 - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for

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monitoring the organization of the Held Separate Joint Venture Interest; for serving on the Excel Paralubes management committee as Respondents' voting member; for managing the Held Separate Joint Venture Interest through the Manager; for maintaining the independence of the Held Separate Joint Venture Interest; and for monitoring Respondents' compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.

- d. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Joint Venture Interest or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Held Separate Joint Venture Interest. Respondents shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate Order.
- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality

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agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.

- g. Respondents may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Hold Separate Order becomes final, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Held Separate Joint Venture Interest are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed substitute trustee. Respondents and the substitute Hold Separate Trustee shall execute a

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Trustee Agreement, subject to the approval of the Commission, consistent with this paragraph.

2. No later than five (5) days after this Hold Separate Order becomes final, Respondents shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Joint Venture Interest, to Daniel J. Bradley ("Manager").
 - a. In the event that Daniel J. Bradley ceases to act as Manager, then Respondents shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate Order.
 - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Joint Venture Interest independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.
 - c. The Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the Manager's compensation for managing the Held Separate Joint Venture Interest may include economic incentives dependent on the financial performance of the Held Separate Joint Venture Interest if there are also sufficient incentives for the Manager to operate the Held Separate Joint Venture Interest at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.

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- d. The Manager shall make no material changes in the present operation of the Held Separate Joint Venture Interest except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
 - e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove Joint Venture Interest Employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute person, which person the Manager shall have the right to approve.
 - f. In addition to those Joint Venture Interest Employees within the Held Separate Joint Venture Interest, the Manager may employ such Persons as are reasonably necessary to assist the Manager in managing the Held Separate Joint Venture Interest.
 - g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondents shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate Order.
3. The Held Separate Joint Venture Interest shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Joint Venture Interest. To the extent that any Joint Venture Interest Employees leave or have left the Held Separate Joint Venture Interest prior to the Effective Date of

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Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.

4. In connection with support services or products not included within the Held Separate Joint Venture Interest, Respondents shall continue to provide, or offer to provide, the same support services to the Held Separate Joint Venture Interest as are being provided to such business interest by Respondents as of the date the Consent Agreement is signed by Respondents. For services that Pennzoil previously provided to the Held Separate Joint Venture Interest, Respondents may charge the same fees, if any, charged by Respondents for such support services as of the date this Consent Agreement is signed by Respondents. For any other services or products that Respondents may provide to the Held Separate Joint Venture Interest, Respondents may charge no more than the same price they charge others for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Joint Venture Interest on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Held Separate Joint Venture Interest. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Joint Venture Interest.
 - a. Respondents shall offer to the Held Separate Joint Venture Interest any services and products that

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Respondents provide to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Joint Venture Interest at any time since January 1, 2002. The Held Separate Joint Venture Interest may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondents. The services and products that Respondents shall offer the Held Separate Joint Venture Interest shall include, but shall not be limited to, the following:

- (1) Human resources administrative services, including but not limited to labor relations support, pension administration, and health benefits;
- (2) Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
- (3) Preparation of tax returns;
- (4) Audit services;
- (5) Information systems, which constructs, maintains, and supports all computer systems;
- (6) Processing of accounts payable;
- (7) Technical support;
- (8) Finance and financial accounting services;
- (9) Procurement of supplies;

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- (10) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Joint Venture Interest; and
 - (11) Legal services;
 - b. the Held Separate Joint Venture Interest shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondents.
5. Respondents shall cause the Hold Separate Trustee, the Manager, and each Joint Venture Interest Employee having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Joint Venture Interest on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Held Separate Joint Venture Interest. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing products of Respondents.
6. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate

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Joint Venture Interest consistent with the provisions of this Hold Separate Order.

7. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall circulate to employees of the Held Separate Joint Venture Interest and to Respondents' employees who are responsible for the refining and sale of Base Oil in the United States, a notice of this Hold Separate Order and the Consent Agreement.
8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Respondents shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee or the Manager.
10. Respondents shall provide the Held Separate Joint Venture Interest with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Joint Venture Interest as it is currently operated;

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- b. to perform all maintenance to, and replacements of, the assets of the Held Separate Joint Venture Interest;
- c. to carry on existing and planned capital projects and business plans; and
- d. to maintain the viability, competitive vigor, and marketability of the Held Separate Joint Venture Interest.

Such financial resources to be provided to the Held Separate Joint Venture Interest shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

11. Respondents shall not, during the Hold Separate Period, offer Joint Venture Interest Employees positions with Respondents. The acquirer approved by the Commission pursuant to the Decision and Order shall have the option of offering employment to any Joint Venture Interest Employees. Respondents shall not interfere with the employment, by the Commission-approved acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Commission-approved acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such

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employees to be employed by the Commission-approved acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents.

12. For a period of one (1) year commencing on the Effective Date of Divestiture, Respondents shall not employ or make offers of employment to Joint Venture Interest Employees who have accepted offers of employment with the Commission-approved acquirer unless the individual has been terminated by the acquirer.
13. Notwithstanding the requirements of Paragraph II.D.11, Respondents shall offer a bonus or severance to Joint Venture Interest Employees that continue their employment with the Held Separate Joint Venture Interest until termination of the Hold Separate Period (in addition to any other bonus or severance to which the employees would otherwise be entitled).
14. Except for the Manager, Joint Venture Interest Employees, and support services employees involved in providing services to the Held Separate Joint Venture Interest pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Joint Venture Interest.
15. Respondents shall assure that Joint Venture Interest Employees receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to

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which those employees would otherwise have been entitled.

16. Respondents' employees (excluding support services employees involved in providing support to the Held Separate Joint Venture Interest pursuant to Paragraph II.D.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Held Separate Joint Venture Interest not in the public domain except:
 - a. as required by law;
 - b. to the extent that necessary information is exchanged in the course of consummating the Merger;
 - c. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - d. in complying with this Hold Separate Order or the Consent Agreement;
 - e. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Joint Venture Interest and the integrity of the Held Separate Joint Venture Interest's financial controls;
 - f. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Joint Venture Interest; or
 - g. in obtaining legal advice.

Nor shall the Manager or Joint Venture Interest Employees receive or have access to, or use or continue to use, any Material Confidential Information not in the public

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domain about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Held Separate Joint Venture Interest. Respondents may receive aggregate financial and operational information relating to the Held Separate Joint Venture Interest only to the extent necessary to allow Respondents to prepare United States consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

17. Respondents and the Held Separate Joint Venture Interest shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Joint Venture Interest, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

III.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in either corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Hold Separate Order.

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IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to any matters contained in this Hold Separate Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

V.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the divestiture required by the Consent Agreement is completed.

By the Commission.

Order

CONFIDENTIAL APPENDIX A

HOLD SEPARATE TRUSTEE AGREEMENT

[Redacted From Public Record Version]

CONFIDENTIAL APPENDIX B

JOINT VENTURE INTEREST EMPLOYEES

[Redacted From Public Record Version]

Attachments

to

Order to Hold Separate and Maintain Assets

[Public Record Version]

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

COLORADO ASSETS

Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), hereinafter referred to as “Respondents,” have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets, including the “Colorado Assets.”

The term “Colorado Assets” as defined in the Federal Trade Commission’s Decision and Order (“Decision and Order”), means the (1) Conoco Denver Refinery Assets and (2) Phillips Colorado Retail Assets. The term “Conoco Denver Refinery Assets” as defined in the Decision and Order, means, Conoco’s refinery located at Commerce City, Colorado and other related assets specified in the Decision and Order. The term “Phillips Colorado Retail Assets” as defined in the Decision and Order, means all of Phillips’ Retail Assets in Colorado as of the date Conoco and Phillips executed the Consent Agreement.

Under the terms of the Consent Agreement, if the Respondents fail to divest the Colorado Assets within twelve (12) months from the date upon which Conoco and Phillips execute the Consent Agreement, a trustee will be appointed to divest the Colorado Assets.

The Colorado Assets must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents or ConocoPhillips, until the Colorado Assets are divested. All competitive information relating to the Colorado Assets must be retained and maintained by the persons involved in the operation of the Colorado Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondents or ConocoPhillips, except as is necessary to fulfill the purposes of the Decision and Order. Persons involved in similar activities at Conoco, Phillips or ConocoPhillips shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Colorado Assets. Any violation of the Consent Agreement may subject Respondents or ConocoPhillips to civil penalties and other relief as provided by law.

ATTACHMENT B

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

PHILLIPS WOODS CROSS ASSETS

Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), hereinafter referred to as “Respondents,” have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets, including the “Phillips Woods Cross Assets.”

The term “Phillips Woods Cross Assets” as defined in the Federal Trade Commission’s Decision and Order (“Decision and Order”), means the (1) Phillips Woods Cross Refinery Assets and (2) Phillips Woods Cross Retail Assets. The term “Phillips Woods Cross Refinery Assets” as defined in the Decision and Order, means, Phillips’ refinery located at Woods Cross, Utah and other related assets specified in the Decision and Order. The term “Phillips Woods Cross Retail Assets” as defined in the Decision and Order, means all of Phillips’ Retail Assets in Wyoming, Utah, Idaho, and Montana as of the date Conoco and Phillips executed the Consent Agreement.

Under the terms of the Consent Agreement, if the Respondents fail to divest the Phillips Woods Cross Assets within twelve (12) months from the date upon which Conoco and Phillips execute the Consent Agreement, a trustee will be appointed to divest the Phillips Woods Cross Assets.

The Phillips Woods Cross Assets must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents or ConocoPhillips, until the Phillips Woods Cross Assets are divested. All competitive information relating to the Phillips Woods Cross Assets must be retained and maintained by the persons involved in the operation of the Phillips Woods Cross Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondents or ConocoPhillips, except as is necessary to fulfill the purposes of the Decision and Order. Persons involved in similar activities at Conoco, Phillips or ConocoPhillips shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Phillips Woods Cross Assets. Any violation of the Consent Agreement may subject Respondents or ConocoPhillips to civil penalties and other relief as provided by law.

CONFIDENTIAL ATTACHMENT C

TRUSTEE AGREEMENT

[Redacted From Public Record Version]

CONFIDENTIAL ATTACHMENT D

EMPLOYEES

[Redacted From Public Record Version]

Analysis

Analysis of Proposed Consent Order to Aid Public Comment**I. Introduction**

The Federal Trade Commission (“Commission” or “FTC”) has issued a complaint (“Complaint”) alleging that the proposed merger of Shell Oil Company (“Shell”) and Pennzoil-Quaker State Company (“Pennzoil”) (collectively “Respondents”) would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and has entered into an agreement containing consent orders (“Agreement Containing Consent Orders”) pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets (“Proposed Consent Order”) and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (“Hold Separate Order”). The Proposed Consent Order remedies the likely anticompetitive effects arising from Respondents’ proposed merger, as alleged in the Complaint, and the Hold Separate Order preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Shell Oil Company, headquartered in Houston, Texas, is the United States operating entity for the Royal Dutch/Shell Group of Companies (collectively referred to as “Shell”). Shell is engaged in virtually all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing. As part of the relief ordered by the Commission in *Chevron/Texaco*, Docket C-4023 (Jan. 2, 2002), Texaco divested its interest in Equilon Enterprises LLC to Shell and its interest in Motiva Enterprises LLC to Shell and Saudi Refining Company. Equilon and Motiva are engaged in the production, distribution and marketing of refined products, including base oil, gasoline, diesel fuel, and other products. During fiscal year 2001, Shell had worldwide revenues of approximately \$135.2 billion and net income of approximately \$10.9 billion.

Analysis

Pennzoil, headquartered in Houston, Texas, is engaged in the business of manufacturing and marketing lubricants, car care products, base oils, branded and unbranded motor oils, transmission fluids, gear lubricants, greases, automotive polishes, automotive chemicals, other automotive products, and specialty industrial products. Pennzoil manufactures and markets conventional and synthetic motor oils primarily under the Pennzoil and Quaker State brands. Pennzoil is also engaged in the franchising, ownership and operation of quick lube oil change centers under the Jiffy Lube name. During fiscal year 2001, Pennzoil had worldwide revenues of approximately \$2.3 billion.

Pennzoil has a 50/50 joint venture with Conoco Inc. called Excel Paralubes that operates a base oil refinery located in Westlake, Louisiana, adjacent to Conoco's petroleum products refinery at Lake Charles, Louisiana. Pennzoil obtains a substantial portion of its base oil requirements from its interest in Excel Paralubes. Pennzoil also has a 10-year base oil supply agreement with Exxon Mobil Corporation, which became effective August 1, 2000, as a result of the Commission's order in *Exxon/Mobil*, Docket C-3907 (Jan. 26, 2001). Pursuant to that agreement, Pennzoil is entitled to obtain up to 6,500 barrels per day of base oil from ExxonMobil, in grades and quantities that are proportionate to ExxonMobil's Gulf Coast base oil production. Part of this volume consists of Group II paraffinic base oil, which is the relevant market alleged in the Complaint.

Pursuant to an agreement and plan of merger dated March 25, 2002, Shell intends to acquire all of the outstanding voting securities of Pennzoil. The transaction is structured such that Shell ND, a wholly-owned subsidiary of Shell, will acquire the Pennzoil shares and then be merged into Pennzoil, with Pennzoil surviving as a wholly-owned subsidiary of Shell. Each outstanding common share of Pennzoil will be converted into the right to receive \$22 in cash.

Analysis

III. The Complaint

The Complaint alleges that the merger of Shell and Pennzoil would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest Pennzoil's 50% interest in Excel Paralubes, which represents Pennzoil's only base oil ownership position. Respondents also have agreed to freeze at approximately current levels Pennzoil's right to obtain Group II base oil supply under the contract with ExxonMobil that was obtained as part of the relief in the *Exxon/Mobil* merger proceeding.

Shell and Pennzoil are competitors in the refining and marketing of Group II paraffinic base oil in a geographic market that consists of the United States and Canada. The refining and marketing of Group II paraffinic base oil in this market would be highly concentrated as a result of the merger. Following the proposed merger, Shell would control at least 39% of Group II refining capacity in the United States and Canada. Overall market concentration, as measured by the Herfindahl-Hirschmann Index (HHI), would increase by more than 700 points to a level in excess of 2,300.

The refining and marketing of Group II paraffinic base oil is a relevant line of commerce (*i.e.*, product market). Paraffinic base oil is a refined petroleum product that is the principal component, or "basestock," of finished lubricants used for a variety of applications, including passenger car motor oil, heavy duty engine oil, automatic transmission fluid, and other lubricant products. In the *Exxon/Mobil* investigation, the Commission concluded that paraffinic base oil constitutes a relevant market.

Developments in the industry since the *Exxon/Mobil* merger indicate that a market consisting of Group II paraffinic base oils

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has evolved. The American Petroleum Institute divides paraffinic base oil into three groups (Groups I, II and III) based on differences in sulfur content, saturates level, and viscosity index. Group II paraffinic base oil has less than 0.03% sulfur by weight, more than 90% saturates by weight, and a viscosity index ranging from 80 to 120. Group II base oil is needed in order to meet current performance standards for lighter-viscosity motor oil formulations (such as 5W-20 and 5W-30), as well as requirements for other lubricants. As new performance standards are adopted, there will be even greater demand for Group II base oil for the production of motor oil and other lubricants. If the price of Group II base oil were to increase by 5-10%, blenders of motor oil and other lubricants would not substitute to other basestocks in sufficient quantities to prevent the increase.

The Complaint alleges that the proposed transaction would lessen competition in a geographic market consisting of the United States and Canada. There is little Group II production outside of the United States and Canada. Further, imports of Group II base oil would be subject to significant freight penalties and would not be competitive with production in the United States and Canada. If the price of Group II base oil in the United States and Canada were to increase by 5-10%, blenders of motor oil and other lubricants would not switch to sources of supply outside the United States and Canada in sufficient quantities to prevent the increase.

There are few significant producers of Group II base oil in the United States and Canada. The proposed merger would eliminate Pennzoil as a major competitor, and would combine Shell, the market leader, into a close partnership with Conoco, another leading producer. As a result of the proposed merger, Shell would control at least 39% of Group II refining capacity in the United States and Canada, and concentration in the relevant market as measured by the Herfindahl-Hirschmann Index would increase by more than 700 points to a level in excess of 2,300.

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Entry into the relevant market is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed merger. Constructing a new refinery or converting an existing Group I refinery to make Group II base oil would require substantial investment, would be subject to significant regulatory obstacles, and would take several years to accomplish. As a result, new entry would not be able to prevent a 5-10% increase in Group II base oil prices.

The Complaint charges that the proposed merger, absent relief, is likely to substantially lessen competition and lead to higher prices of Group II paraffinic base oil, by eliminating direct competition between Shell and Pennzoil, by increasing the likelihood that the combined Shell/Pennzoil will unilaterally exercise market power, and by increasing the likelihood of collusion or coordinated interaction among competitors in the refining and marketing of Group II paraffinic base oil.

To remedy the likely competitive harm, the Proposed Order requires Respondents to divest Pennzoil's interest in Excel Paralubes and to freeze Pennzoil's ability to obtain additional Group II supply under the agreement with ExxonMobil. This relief will effectively remedy any anticompetitive effects that could be expected to arise from this transaction.

IV. Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Orders with Shell and Pennzoil in settlement of the Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Hold Separate Order for the divestiture of certain assets described below.

In order to remedy the anticompetitive effects that have been identified, Respondents have agreed to divest Pennzoil's 50% interest in Excel Paralubes, and to freeze Pennzoil's right to obtain additional Group II supply under the contract with

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ExxonMobil at approximately current levels. If the required divestiture has not been accomplished within the required time, then Respondents are required to transfer Pennzoil's interest in Excel Paralubes to a trustee, who will have the responsibility of accomplishing the required divestiture.

Paragraph II.A. of the Proposed Order requires Respondents to divest Pennzoil's interest in Excel Paralubes, at no minimum price, within twelve months after executing the Order, to an acquirer that receives the prior approval of the Commission.

Paragraph II.B. requires Respondents to negotiate with the acquirer, at the acquirer's option, a supply agreement for Respondents to purchase Group II base oil. Such agreement may not exceed one year, may not contain renewal or evergreen rights, and is subject to prior approval by the Commission. Paragraph II.C. provides that, prior to the effective date of divestiture, Respondents may not enter into any agreement to purchase Group II base oil from the acquirer other than one made pursuant to Paragraph II.B.

Paragraph II.D. of the Proposed Order explicitly provides that Respondents may not divest the Pennzoil Excel Paralubes Interest to Conoco, and must enforce a letter agreement with Conoco relating to Excel Paralubes. Conoco already has a significant share of the Group II market, and the addition of Pennzoil's share of Excel Paralubes would result in a significant increase in concentration. In addition, under the Joint Venture Agreement forming the Excel Paralubes partnership, Conoco may, under certain circumstances, have a right of first refusal or a first option to purchase Pennzoil's interest in Excel Paralubes. Conoco has entered into an agreement with Respondents dealing with its waiver of such rights, and consenting to the assignment of a supply agreement pursuant to which Pennzoil purchases base oil from Excel Paralubes.

Paragraph III limits Respondents' use of their rights to purchase Group II base oil from ExxonMobil under the

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ExxonMobil/Pennzoil Base Oil Agreement. That agreement allows Pennzoil to obtain base oil from ExxonMobil in the proportionate types and amounts corresponding to production at designated ExxonMobil refineries. Pennzoil currently is taking approximately 1,500 barrels per day of Group II under this contract. Any significant increase in that amount could unduly increase concentration. Accordingly, Paragraph III prevents Respondents from increasing their share of the market for Group II Base Oil through additional supply under this agreement.

If Respondents have not accomplished the divestiture within the required time period, Paragraph IV provides that the Commission may appoint a trustee to divest the Pennzoil Excel Paralubes Interest, at no minimum price, to a buyer approved by the Commission. The trustee will have the exclusive power and authority to accomplish the divestiture within twelve months, subject to any necessary extensions by the Commission. Paragraph IV.C.5 requires that the trustee will have access to information related to Atlas and Excel Paralubes as necessary to fulfill his or her obligations. (Atlas is the wholly-owned subsidiary of Pennzoil that holds Pennzoil's interest in the Excel Paralubes partnership.) The trustee shall use his or her best efforts to negotiate the most favorable price and terms for the divestiture, subject to the Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. If the trustee receives more than one bona fide offer from entities approved by the Commission, the trustee will divest to the party selected by the Respondents.

Other provisions of Paragraph IV.C. generally provide that Respondents are responsible for management expenses incurred by the trustee, that the trustee has authority to employ other persons necessary to carry out his or her duties and responsibilities, and that Respondents indemnify and hold the trustee harmless against any liabilities or expenses arising out of, or in connection with, performance of the trustee's duties. Respondents may require the trustee to sign a customary confidentiality agreement, provided that such agreement may not

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restrict the trustee from providing any information to the Commission.

Paragraphs V - VIII of the Proposed Order contain certain general provisions. Pursuant to Paragraph V, Respondents are required to provide the Commission with a report of compliance with the Proposed Order every thirty days until the divestiture is completed and annually for nine years after the first year the Order becomes final. Paragraph VI provides for notification to the Commission in the event of any corporate changes in the Respondents. Paragraph VII requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Finally, Paragraph VIII terminates the Order ten years from the date it becomes final.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission, pursuant to a change in its Rules of Practice, has also issued its Complaint in this matter, as well as the Hold Separate Order. Comments received during this thirty day comment period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestiture, and to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

Complaint

IN THE MATTER OF

ROBERT M. CURRIERCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4067; File No. 0023211**Complaint, December 13, 2002--Decision, December 13, 2002*

This consent order addresses representations in infomercials for “Snorenz” – a dietary supplement consisting of oils and vitamins that is sprayed on the back of the throat of persons who snore – made by Respondent Dr. Robert M. Currier. The order, among other things, requires the respondent to possess competent and reliable scientific evidence to substantiate representations that Snorenz – or any other food, drug, or dietary supplement – reduces or eliminates snoring or the sound of snoring, or eliminates, reduces or mitigates the symptoms of sleep apnea. The order also requires the respondent – when acting as an expert endorser – actually to exercise his represented expertise in the form of an examination or testing at least as extensive as an expert in the field would normally conduct. In addition, the order requires the respondent – whenever he advertises that certain products are effective in reducing or eliminating snoring or the sounds of snoring – to affirmatively disclose a warning statement about sleep apnea and the need for physician consultation. The order also requires the respondent to possess and rely upon adequate substantiation to support any representation about the benefits, performance, efficacy, or safety of Snorenz or any other product, service or program, and – if the respondent makes such representations as an expert endorser – he must possess substantiation in the form of an examination or testing at least as extensive as an expert in the field would normally conduct. In addition, the order prohibits the respondent from making false claims about scientific support for any product, service, or program, and requires him to disclose any material connection between himself and any product, program or service he endorses.

Participants

For the Commission: *Lemuel W. Dowdy, Walter C. Gross, III, Laureen Kapin, James Reilly Dolan, Elaine D. Kolish, and Randi M. Boorstein.*

For the Respondent: *Denise Burke.*