

Complaint

**IN THE MATTER OF
LEGACY LEARNING SYSTEMS, INC. AND LESTER
GABRIEL SMITH**

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

*Docket No. C-4323; File No. 102 3055
Filed June 1, 2011 – Decision June 1, 2011*

This consent order relates to the advertising of instructional courses via an online affiliate marketing program by respondents Legacy Learning System and Lester Gabriel Smith (“Respondents”). The complaint alleges that Respondents promoted their instructional courses through affiliates that received financial compensation for providing positive endorsements of Respondents’ courses in articles, blog posts, or other online editorial copy. However, Respondents failed to implement a reasonable monitoring program to ensure that these postings clearly and prominently disclosed the compensated nature of the affiliates’ relationship. The complaint alleges that Respondents violated Section 5 of the FTC Act by disseminating or causing to be disseminated reviews of their instructional courses that misrepresented that they were those of independent, ordinary consumers. The complaint further alleges that Respondents violated Section 5 by failing to disclose, or disclose adequately, that the affiliates receive financial compensation from the sale of Respondents’ products. The consent order requires Respondents to pay \$250,000 in monetary relief. The consent order further prohibits Respondents from misrepresenting the status of any user or endorser of a product or service in connection with the advertising of any product or service and establishes certain disclosure requirements regarding the relationship between promoters and users or endorsers of a product or service.

Participants

For the *Commission*: Victor DeFrancis and Stacey Ferguson.

For the *Respondents*: J. Carson Stone, III, J. Carson Stone,
III, P.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Legacy Learning Systems, Inc., a corporation, and Lester Gabriel Smith, an officer and director of the corporation (“respondents”),

Complaint

have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Legacy Learning Systems, Inc. (“Legacy”) is a Tennessee corporation with its principal office or place of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.

2. Respondent Lester Gabriel Smith is Legacy’s CEO and owns 100% of the company. At all times relevant to this complaint, Smith, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

3. The acts and practices of respondents, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Respondents manufacture, advertise, market, promote, offer to sell, sell, and distribute instructional courses containing DVDs and written materials throughout the United States through their website www.learnandmaster.com.

5. Respondents advertise their instructional courses on the Internet through a variety of techniques, including an affiliate program created in 2006, the Legacy Learning Systems Affiliate Program (the “Program”). After respondents admit affiliates into their Program, those affiliates generate commissions, ranging from 20% to 45% of the cost of each instructional course sold, by directing Internet purchasers to Legacy’s website at www.learnandmaster.com.

6. Respondents have recruited “Review Ad” affiliates for the Program, who promote Legacy’s instructional courses through positive endorsements in articles, blog posts, or other online editorial copy that contain hyperlinks to Legacy’s website in close

Complaint

proximity to the endorsements. Respondents' Review Ad affiliates often post such endorsements using statements that give readers the impression the endorsements have been submitted by ordinary consumers.

7. Through the Program, respondents have disseminated or have caused to be disseminated advertisements for their instructional videos, including, but not necessarily limited to, those attached as Exhibit A. These advertisements contain the following statements:

www.bestguitarsoftware.com:

Features: ★★★★★ (5 Stars out of 5 stars)

The undisputed No. 1 training product for someone wanting to learn how to play the guitar.

www.learnandmasterlessons.com:

Read my Independent Review and Discover the Truth of Learn & Master Guitar Now!

Rank: #1 . . .

Simply the best beginner course available, Learn and Master Guitar is well structured, well paced, and contains an appropriate level of music theory and techniques to develop your musicianship.

www.reviewmspy.com:

Learn and Master Guitar. 4.9/5 Stars

The best home study DVD course for guitar I have ever seen.

www.guitarlessoninsider.com:

Complaint

Learn and Master Guitar is by far the **most comprehensive guide out there** to help you learn to play the guitar . . . This truly is **the most you can get for your money** as far as a guitar course where you are able to learn at your own pace.

www.reviewsnest.com:

Reviews Nest
The Independent Reviews Site

What we think:

Putting it simply: Learn and Master Guitar emerged from our test as the King of “learn guitar at home” courses.

8. Through advertisements including, but not limited to, those set forth in Paragraph 7, a small number of respondents’ Review Ad affiliates have generated substantial revenues for Legacy. In fact, twenty-five of Legacy’s Review Ad affiliates are responsible for at least \$5 million in sales of Legacy’s instructional courses.

9. Since at least December 1, 2009, respondents’ contracts have stated that their Review Ad affiliates should “comply with the FTC guidelines on disclosures.” However, respondents have failed to implement a reasonable monitoring program to ensure that their Review Ad affiliates clearly and prominently disclose their relationship to Legacy. In fact, many of respondents’ Review Ad affiliates, including but not limited to those described in Paragraph 8, have endorsed Legacy’s instructional courses without any disclosure of their relationship to Legacy, or with disclosures accessible only through inconspicuous hyperlinks located at the bottom of the home pages of Review Ad affiliates’ web sites.

10. Through the means described in Paragraphs 5-9, respondents have represented, directly or indirectly, expressly or by implication, that reviews of their instructional videos were independent reviews reflecting the opinions of ordinary consumers.

Complaint

11. In truth and in fact, the reviews for those instructional videos were not independent reviews reflecting the opinions of ordinary consumers. Legacy's affiliates created these reviews in furtherance of Legacy's Program to promote the sales of Legacy's instructional videos. Therefore, the representation set forth in Paragraph 10 was, and is, false and misleading.

12. Through the means described in Paragraphs 5-9, respondents have represented, directly or indirectly, expressly or by implication, that reviews for Legacy's instructional videos represented endorsements from persons who had used or reviewed those instructional videos. Respondents failed to disclose, or disclose adequately, that the endorser receives financial compensation from the sale of Legacy's products. This fact would be material to consumers in their purchasing decision regarding the instructional videos. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

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

THEREFORE, the Federal Trade Commission this first day of June, 2011, has issued this Complaint against respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the 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 has reason to believe that the respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Legacy Learning Systems, Inc. is a Tennessee corporation with its principal office or place

Decision and Order

of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.

Respondent Lester Gabriel Smith is an officer and director of the corporate respondent, with his principal office or place of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.

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

ORDER**DEFINITIONS**

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

1. Unless otherwise specified, “respondents” shall mean Legacy Learning Systems, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees; and Lester Gabriel Smith, individually, and as an officer and director of Legacy.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Affiliate Program” shall mean any arrangement whereby any person, through hyperlinks on the World Wide Web, hyperlinks in commercial email messages, or any other Internet-based mechanism, provides respondents with, or refers to respondents, potential or actual customers.
4. “Affiliate” shall mean any person or entity who participates in an Affiliate Program.
5. “Material connection” shall mean any relationship that

Decision and Order

materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

6. “Endorsement” shall mean as defined in the Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0.
7. “Clearly and prominently” shall mean:
 - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
 - B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them;
 - D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and

Decision and Order

presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and

- E. In all instances, the required disclosures are presented in an understandable language and syntax, and in the same language as the predominant language that is used in the communication, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
- 8. The term “including” in this order shall mean “without limitation.”
- 9. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the status of any user or endorser of a product or service, including, but not limited to, misrepresenting that the user or endorser is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution

Decision and Order

of any product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about any user or endorser of such product or service unless they disclose, clearly and prominently, a material connection, when one exists, between such user and endorser and the respondents or any other individual or entity manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product or service.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall take steps sufficient to ensure compliance with Parts I and II of this order. Such steps shall include, at a minimum:

- A. Establishing, implementing, and thereafter maintaining a system to monitor and review their Affiliates' representations and disclosures to ensure compliance with Parts I and II of this order. The system shall be implemented as follows:
 - 1. No later than thirty (30) days after the date of service of this order, and, on a semi-annual basis thereafter, respondents shall determine those Affiliates that generate the most sales for respondents. For respondents' top fifty (50) revenue-generating Affiliates, respondents shall monitor and review each of their web sites on at least a monthly basis at times not disclosed in advance to their Affiliates and in a manner reasonably calculated not to disclose the source of the monitoring activity at the time it is being conducted;

Decision and Order

2. For the remainder of respondents' Affiliates, respondents shall monitor and review the web sites of a random sample of fifty (50) on at least a monthly basis at times not disclosed in advance to their Affiliates and in a manner reasonably calculated not to disclose the source of the monitoring activity at the time it is being conducted;
- B. Immediately terminating from any Affiliate Program and ceasing payment to any Affiliate who respondents reasonably conclude:
1. has misrepresented, in any manner, the status of such Affiliate, including, but not limited to, the misrepresentation that such Affiliate is an independent user or ordinary consumer; or
 2. has failed to disclose, clearly and prominently, a material connection, when one exists, between such Affiliate and the respondents; and
- C. Creating, and thereafter, maintaining, reports sufficient to show the results of the monthly monitoring required by subpart A of this Part of the order.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, to ensure compliance with Parts I and II of this order, shall, for (i) any prospective Affiliate, prior to acceptance into any Affiliate Program or (ii) any current Affiliate, no later than ten (10) days after the date of service of this order:

Decision and Order

- A. Provide each such person a copy of this order;
- B. Obtain from each such person a signed and dated statement acknowledging receipt of this order and expressly agreeing to comply with this order; and
- C. Provide written notice that engaging in acts or practices prohibited by this order will result in immediate termination of any Affiliate Program account and forfeiture of all monies earned or owed. Any electronic signature that respondents obtain pursuant to this Part shall comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), 15 U.S.C. § 7001 et seq.

V.

IT IS FURTHER ORDERED that respondents shall pay to the Federal Trade Commission the sum of Two Hundred and Fifty Thousand Dollars (\$250,000). This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final; *provided* that all respondents are primarily liable, jointly and severally, for the payment amount, including any default payment amount if the payment is in default, unless and until payment is made in full.
- B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961(a), from the date of default to the date of payment, shall immediately become due and payable to the Commission.

Decision and Order

Respondents agree that, in such event, the facts as alleged in the complaint shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

- C. All funds paid pursuant to this Part, together with any accrued interest, shall be used by the Commission in its sole discretion to provide such relief as it determines to be reasonably related to respondents' practices alleged in the complaint, and to pay any attendant costs of administration. Such relief may include, but shall not be limited to, the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive acts or practices as alleged in the Complaint. If the Commission determines, in its sole discretion, that such relief is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VI.

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make

Decision and Order

available to the Federal Trade Commission for inspection and copying, any documents, whether prepared by or on behalf of respondents, that:

- A. Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any endorsement made by respondents, and any responses to those complaints or inquiries;
- B. Are reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order;
- C. Contradict, qualify, or call into question respondents' compliance with this order; and
- D. All acknowledgments of receipt of this order obtained pursuant to Parts IV.B and VII.

VII.

IT IS FURTHER ORDERED that respondent Legacy, its successors and assigns, and respondent Smith shall deliver a copy of this order to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of this order. For current personnel, delivery shall be within ten (10) days of the date of service of this order. For new personnel, delivery shall occur prior to their first assuming their responsibilities.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent Legacy, 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, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or related entity 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, the respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line Legacy Learning Systems, Inc., *et al.*, File No. 102-3055. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

IX.

IT IS FURTHER ORDERED that respondent Smith, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include Smith's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal

Decision and Order

Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line Legacy Learning Systems, Inc., *et al.*, File No. 102-3055. *Provided, however,* that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

X.

IT IS FURTHER ORDERED that respondent Legacy, its successors and assigns, and respondent Smith shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XI.

This order will terminate on June 1, 2031, 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 respondents 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 OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Legacy Learning Systems, Inc. and Lester Gabriel Smith, an officer and director of the corporation (“respondents”).

The proposed consent order (“proposed 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.

The practices challenged in this case relate to the advertising of respondents’ instructional courses via an online affiliate marketing program. According to the Commission’s complaint, many of respondents’ affiliates promoted respondents’ instructional courses

Analysis to Aid Public Comment

through positive endorsements in articles, blog posts, or other online editorial copy that contained hyperlinks to respondents' website in close proximity to the endorsements. For each sale of an instructional course to a consumer directed to respondents' website by an affiliate, respondents paid the affiliate a commission of 20 to 45 percent of the purchase price. The affiliates often posted endorsements about respondents' instructional courses using statements that gave readers the impression the endorsements had been submitted by ordinary consumers or independent reviewers. Respondents failed to implement a reasonable monitoring program to ensure that these postings clearly and prominently disclosed the compensated nature of the affiliates' relationship to respondents.

The Commission's complaint alleges that respondents violated Section 5 of the FTC Act by disseminating or causing to be disseminated reviews of their instructional courses that misrepresented that they were those of independent, ordinary consumers. The complaint further alleges that respondents violated Section 5 by failing to disclose, or disclose adequately, that the affiliates receive financial compensation from the sale of respondents' products.

Part I of the proposed order prohibits respondents, in connection with the advertising of any product or service, from misrepresenting the status of any user or endorser of a product or service, including, but not limited to, misrepresenting that the user or endorser is an independent user or ordinary consumer of the product or service.

Part II prohibits respondents from making any representation about any user or endorser of a product or service unless they disclose, clearly and prominently, a material connection, when one exists, between the user or endorser of the product or service and any other party involved in promoting that product or service. The proposed order defines "material connection" as any relationship that materially affects the weight or credibility of any endorsement and would not be reasonably expected by consumers.

Analysis to Aid Public Comment

Part III requires respondents to take immediate steps to ensure compliance with Parts I and II of the order, including maintaining a system to review and monitor their affiliate representations and disclosures. The proposed order requires respondents to determine, on a semi-annual basis, their top fifty (50) revenue-generating affiliates, and then monitor, on a monthly basis, the web sites of those affiliates and the web sites of a random sample of fifty (50) of their remaining affiliates. Part III also requires respondents to terminate any affiliate who engages in conduct inconsistent with Parts I and II of the order and to maintain reports regarding compliance with Part III of the order.

Part IV requires respondents to serve copies of the order to prospective affiliates prior to their entry into respondents' affiliate program, and to current affiliates within ten days of the date of service of the order.

Part V requires respondents to pay to the Commission a sum of \$250,000. This payment may be used in the Commission's sole discretion to provide appropriate relief, which may include, but is not limited to, the rescission of contracts, payment of damages, and/or public notification respecting the unfair or deceptive acts or practices alleged in the complaint. If the Commission determines that such relief is wholly or partially impracticable, any or all such funds shall be paid to the United States Treasury.

Parts VI through X of the proposed order require respondents to: keep copies of relevant consumer complaints and inquiries, documents demonstrating order compliance, and any documents relating to any representation covered by this order; provide copies of the order to certain of their personnel; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; notify the Commission of changes in corporate business or employment as to respondent Lester Gabriel Smith individually; and file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years, with certain exceptions.

Analysis to Aid Public Comment

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

Complaint

**IN THE MATTER OF
HIKMA PHARMACEUTICALS PLC**

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 No. C-4320; File No. 111 0051
Filed April 25, 2011 – Decision June 6, 2011*

This consent order relates to the proposed acquisition by Hikma Pharmaceuticals (“Hikma”) of Baxter Healthcare Corporation, Inc.’s generic injectable pharmaceutical business. The complaint alleges that the proposed acquisition would substantially lessen competition in the U.S. markets for generic injectable phenytoin and generic injectable promethazine. In order to replace the competition that would otherwise be eliminated by the proposed acquisition, the consent order requires Hikma to divest all of its rights and assets relating to its generic injectable phenytoin and generic injectable promethazine products to X-Gen Pharmaceuticals, Inc. or another Commission-approved acquirer. The consent order further requires Hikma to maintain the competitive viability of these assets until they are divested.

Participants

For the *Commission*: Jennifer Lee, Mark Silvia, David Von Nirschl, and Kari A. Wallace.

For the *Respondent*: John D. Carroll, Brian R. Meiners, and Kevin R. Sullivan, King & Spalding LLP; Michael Sennett and Pamela L. Taylor, Jones Day.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that the Respondent Hikma Pharmaceuticals PLC (“Hikma”), a company subject to the jurisdiction of the Commission, has entered into an agreement to