Country used for the design, manufacture, or sale of class rings without the prior approval of the Commission. The proposed order also prohibits Town & Country, for a period of ten years, from purchasing any interest in Castle Harlan or Class Rings, Inc., or any assets from Castle Harlan or Class Rings, Inc., used for the design, manufacture, or sale of class rings without the prior approval of the Commission. Town & Country, however, may purchase assets from Class Rings, Inc., or Castle Harlan totaling not more than $2 million in any twelve month period. The purpose of these provisions is to ensure that Class Rings, Inc. and Town & Country remain independent from each other, thereby fostering a competitive environment for the sale of class rings.

The proposed order also prohibits Castle Harlan and Class Rings, Inc., for a period of one year from the date this proposed order becomes final, from employing or seeking to employ any person who is or was employed at any time during calendar year 1996 by Gold Lance or Town & Country in the design, manufacture or sale of class rings. The purpose of this provision to ensure that Town & Country, through Gold Lance, remains a viable competitor in the manufacture and sale of class rings.

An interim agreement was also entered into by the parties and the Commission that requires Class Rings, Inc., Castle Harlan, and Town & Country to be bound by the terms of the proposed order, as if it were final, from the date that Class Rings, Inc. and Castle Harlan signed the proposed order.

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

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

In *Class Rings, Inc.*, File No. 961–0067

Today the Commission accepts for public comments a consent agreement resolving allegations that the proposed acquisitions by Class Rings, Inc., a newly created subsidiary of Castle Harlan Partners II, L.P., of certain assets of Town & Country Corp. (two subsidiaries, Gold Lance, Inc., and L.G. Balfour, Inc.) and CJC Holdings, Inc., would be unlawful. The proposed order prohibits the acquisition of Gold Lance.

I concur, except with respect to the prior approval provisions in Paragraphs III and IV of the proposed order, which are inconsistent with the ''Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions'' (''Prior Approval Policy Statement'' or ''Statement''). In its Statement, the Commission announced that it would ''rely on'' the Hart-Scott-Rodino premerger notification requirements in lieu of imposing prior approval or prior notice provisions in its orders. Although the Commission reserved its power to use prior approval or notice ''in certain limited circumstances,'' it cited only a single situation in which a prior approval clause might be appropriate, that is, ''where there is a credible risk that a company'' might attempt the same merger.

The complaint does not allege any facts showing a ''credible risk'' that the parties might attempt to acquire Gold Lance a second time. Nor am I aware of any reason to think that the parties have a concealed plan or intention to circumvent the order by doing so. Of course, as evidenced by their premerger notification report filed pursuant to the requirements of the Hart-Scott-Rodino Act, the parties wanted to acquire Gold Lance, but every merger case involves parties who want to combine firms or assets.

As I understand it, the primary reason for assuming that the parties will try again is that they seemed so much to want to consummate this transaction. The intensity of the parties' interest in a proposed transaction as perceived by the Commission (even assuming that we can distinguish between the vigor of their legal representation and the intensity of their own feelings) has no established predictive value of the likelihood that parties will again attempt a transaction now known to be viewed unfavorably by the FTC. In addition, the intensity of their feelings as perceived by the Commission is unlikely to result in an evenhanded selection of exceptions to our prior approval policy.

It also has been suggested that one reason for imposing a prior approval requirement is that the Commission is prohibiting the acquisition of Gold Lance, rather than allowing it subject to a divestiture requirement, under which the Commission supervises the divestiture. In fact, however, the choice of remedy is not predictive of the likelihood of recurrence. Once a divestiture has been accomplished, the Commission has no greater ability to deter a particular transaction than it will here.

I am most sympathetic to the concern that if the parties attempted to repeat the transaction in the future, the Commission might be faced with a significant duplicative expenditure of resources. That is one of the reasons I dissented from the Commission's Prior Approval Policy Statement. Dissenting Statement of Commissioner Mary L. Azcuyenaga on Decision to Abandon Prior Approval Requirements in Merger Orders, 4 CCH Trade Reg. Rep. ¶ 13,241 at 20,992 (1995). But given that we have the policy, it seems to me incumbent on the Commission either to live by it or to change it.[1]

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[File No. 932–3297]

Telebrands Corp., Ajit Khubani; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would among other things prohibit the Roanoke, Virginia-based mail and telephone order company—and an individual who is an officer and director of the company—from representing that the Sweda Power Antenna (a device purported to improve television and radio reception) provides the best, crispest, clearest or most focused television reception achievable without cable installation, and would require any claim about the relative or absolute performance, attributes, or effectiveness of any product intended to improve a television's or radio's reception, sound, or image to be truthful and supported by competent and reliable evidence. The consent agreement would also prohibit the respondents from making a number of false or unsubstantiated claims about the WhisperXL (a purportedly major breakthrough in sound enhancement technology). The consent agreement resolves allegations in an accompanying complaint that the respondents made unsubstantiated and false claims in advertising for the Sweda Power Antenna and the WhisperXL, and misrepresented a money-back guarantee with respect to the Sweda Power Antenna. A related federal district court decree will require the respondents to

[1] *See* Dissenting Statement of Commissioner Mary L. Azcuenaga in The Vons Companies, Inc., Docket No. C–3391 (May 24, 1996).

pay a $95,000 civil penalty, and will prohibit them from violating the Commission's Mail or Telephone Order Merchandise Rule.

DATES: Comments must be received on or before December 9, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room H–159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William Street, 13th Floor, New York, New York 10038–2603, (212) 264–1207. Donald G. D'Amato, New York Regional Office, Federal Trade Commission, 150 William Street, 13th Floor, New York New York 10038–2063, (212) 264–1223.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page, on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Telebrands Corp. (''Telebrands'') and Ajit Khubani. Proposed respondents are marketers of varied products, including the Sweda Power Antenna and the WhisperXL, which were subjects of this investigation.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and 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 Commission's complaint charges that the proposed respondents made the following unsubstantiated and false representations about the Sweda Power Antenna: (1) Sweda Power Antenna provides the best, crispest, clearest, or most focused television reception achievable without cable installation; (2) Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio; and (3) the installation of a Sweda Power Antenna will more effectively improve television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

Further, the complaint alleges that the proposed respondents failed to timely honor their money back guarantee for the Sweda Power Antenna.

Part I of the proposed order prohibits proposed respondents from representing that the Sweda Power Antenna provides the best, crispest, clearest or most focused television reception achievable without cable installation or will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or satellite or external dish antenna.

Part II of the proposed order requires that any claim proposed respondents make that the Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio be truthful and supported by competent and reliable evidence. Similarly, Part III of the proposed order requires that any claim about the relative or absolute performance, attributes, or effectiveness of any product intended to improve a television's or radio's reception, sound, or image be truthful and supported by competent and reliable evidence.

Part IV of the proposed order prohibits the proposed respondents from misrepresenting, by act or omission, any guarantee of satisfaction or refund offer in connection with the advertising or sale of any product, and requires the proposed respondents to make a full refund of the purchase price, as well as any shipping, insurance, and handling charges, within seven business days of receiving the consumer's request for the guaranteed refund. The proposed order permits the respondents to exclude fees, such as handling charges, paid by the consumer from the terms of the guarantee of satisfaction or refund offer so long as the exclusion is clear, conspicuous, and in close proximity to the guarantee of satisfaction or refund offer.

With respect to the WhisperXL, the complaint charges that the proposed respondents made the following unsubstantiated and false representations about the WhisperXL: (1) WhisperXL is a major breakthrough in sound enhancement technology; (2) WhisperXL is an effective hearing aid; (3) WhisperXL is designed to produce or produces clear amplification of whispered or normal speech, television, radio, or other mid- to high-frequency sounds at a distance of more than a few feet; (4) WhisperXL allows the user to hear a whisper from as far as 100 feet away; and (5) WhisperXL allows the user to hear a pin drop from 50 feet away.

Part V of the proposed order prohibits the proposed respondents from making these claims for the WhisperXL. Further, Part VI of the proposed order requires that any claim respondents make about the relative or absolute performance, attributes, or effectiveness of any hearing aid be truthful and supported by competent and reliable evidence.

The proposed order contains recordkeeping requirements for materials that substantiate, qualify, or contradict claims covered by the proposed order (Part VII), and requires the proposed respondents to keep and maintain all records demonstrating compliance with the terms and provisions of the order (Part VIII). Parts IX and X of the proposed order require distribution of a copy of the order to current and future officers and agents. Part XI provides for Commission notification upon a change in the corporate respondent and Part XII requires Commission notification when the individual respondent changes his present business or employment.

Part XIII provides for the termination of the order after twenty (20) years under certain circumstances. Part XIV obligates proposed respondents to file compliance reports with the Commission.

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.

Donald S. Clark,

Secretary.

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