

may not keep perishable food items sufficiently cold to prevent the growth of harmful bacteria on the food, or that Koolatron's maximum internal heating temperature is not high enough to kill or prevent the growth of certain harmful bacteria on perishable food items.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondent from engaging in similar acts in the future.

Part I of the proposed order, in connection with any product for use in the storage of food, prohibits the proposed respondent from misrepresenting: (1) The comparative or absolute ability of such product to refrigerate or cool food items or medicines or to maintain proper cold storage temperatures; (2) the comparative or absolute ability of such product to heat or warm food items; (3) the comparative or absolute ability of such product to hold its cooling capacity after being unplugged from a power source; or (4) the effect of operating such product off a car battery when the car is not running, including the amount of power used by the product in such circumstances or the potential for such use to drain the car battery of all power. Part II, in connection with any product for use in the storage of food, prohibits any representation about the benefits, performance, efficacy, or safety of such product, unless proposed respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part III of the proposed order, in connection with Koolatron or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for cooling food items, unless proposed respondent also discloses that such product may not keep perishable food items sufficiently cold in some circumstances to prevent the growth of harmful bacteria on the food. Part IV of the proposed order, in connection with Koolatron or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for heating or warming food items, unless proposed respondent also discloses that use of the product for such purposes may pose a risk of buildup of harmful bacteria on the food.

The proposed order (Part V) contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires

the proposed respondent to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, the proposed order (Part VI) requires distribution of a copy of the consent decree to current and future officers and agents.

Part VII provides for Commission notification upon a change in the corporate respondent. The proposed order also requires the filing of compliance report(s) (Part VIII). Finally, Part IX provides for the termination of the order after twenty years under certain circumstances.

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.

[FR Doc. 96-31802 Filed 12-13-96; 8:45 am]

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[File No. 971-0016; 971-0017]

J.C. Penney Company, Inc.; Thrift Drug, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed 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 require, among other things, Penney, the parent company of Thrift Drug, to divest a total of 161 drug stores in North and South Carolina by March 1997. The agreement settles allegations that Penney's acquisition of Eckerd Corporation and 190 Rite Aid stores in these two states would violate federal antitrust laws by allowing the firm to raise prices for pharmacy services to health insurance companies and other third party payors.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT:

William J. Baer, Federal Trade Commission, H-374, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326-2932
George S. Cary, Federal Trade Commission, H-374, 6th and

Pennsylvania Ave, NW, Washington, DC 20580. (202) 326-3741
Ann Malester, Federal Trade Commission, S-2308, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326-2682

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 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 Commission Actions section of the FTC Home Page (for December 9, 1996), 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, NW., Washington, DC. 20580, either in person or by calling (202) 326-3627. 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 § 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 ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from J.C. Penney Company, Inc. and its wholly-owned subsidiary Thrift Drug, Inc. (collectively "J.C. Penney/Thrift") under which J.C. Penney/Thrift would be required to divest a total of 34 Thrift Drug retail drug stores in the Raleigh-Durham and Charlotte, North Carolina metropolitan areas and all of the Rite Aid retail drug stores in the state of North Carolina and in the Charleston, South Carolina metropolitan area, to a Commission-approved purchaser. The agreement is designed to remedy the anticompetitive effects resulting from J.C. Penney/Thrift's acquisitions of both the Eckerd Corporation and the Rite Aid drug stores in North Carolina and South Carolina.

The proposed Consent Order has been placed on the public record for sixty (60) days for 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 the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The proposed complaint alleges that the proposed acquisitions, if consummated, would constitute violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for the retail sale of pharmacy services to third-party payors.

The retail sale of pharmacy services to third-party payors refers to prescription drugs sold by retail outlets such as drug store chains, independent drug stores, food stores and mass merchandise stores, to third-party payors, which include insurance carriers, health maintenance organizations, preferred provider organizations, and corporate employers. Third-party payors provide retail pharmacy service benefits to their beneficiaries, typically through intermediaries known as pharmacy benefit management ("PBM") firms that create and administer retail pharmacy networks on behalf of third-party payors, whereby third-party payor beneficiaries may go to any pharmacy participating in the network to have prescriptions filled. In establishing these pharmacy networks, third-party payors rely on competition between large pharmacy chains to drive down the cost of pharmacy services. In markets where only a small number of pharmacy chains compete, third-party payors pay higher rates for pharmacy services. Where a single pharmacy chain controls a large share of pharmacy locations in a given area, that chain is able to extract higher prices, and this situation is exacerbated when the second largest pharmacy chain in that given area has a much smaller number of pharmacies than the largest one.

J.C. Penney/Thrift's proposed acquisitions of Eckerd and the Rite Aid stores in North Carolina and South Carolina will give the combined entity a dominant position in the state of North Carolina and its three major metropolitan areas—Charlotte, Greensboro, and Raleigh-Durham—and in Charleston, South Carolina, the second largest metropolitan area in South Carolina, and as a result, the ability to increase prices for the retail sale of pharmacy services to third-party payors. Further, timely entry is unlikely in the market for the retail sale of pharmacy services to third-party payors in these geographic markets on the scale necessary to offset the competitive harm

likely from the combination of J.C. Penney/Thrift, Eckerd and Rite Aid.

The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the acquisitions. Under the proposed Consent Order, J.C. Penney/Thrift is required to divest within four (4) months of November 21, 1996, the date J.C. Penney/Thrift signed the Consent Agreement, the following: fourteen (14) Thrift drug stores in the Charlotte metropolitan area; twenty (20) Thrift drug stores in the Raleigh-Durham metropolitan area; all Rite Aid drug stores in North Carolina (110 stores); and all Rite Aid drug stores in the Charleston, South Carolina metropolitan area (17 stores). In the event that J.C. Penney/Thrift does not acquire the Rite Aid stores in North Carolina and South Carolina, then J.C. Penney/Thrift will have five (5) months from November 21, 1996, to sell the 34 Thrift drug stores in Charlotte and Raleigh-Durham, North Carolina. The proposed Order specifies that the 34 Thrift drug stores will go to a single purchaser to ensure competition by recreating a chain of sufficient size and coverage to serve as an alternative anchor pharmacy chain for a PBM retail pharmacy network.

Under the proposed Order, if the divestiture is not accomplished within the required time period, then the Commission may appoint a trustee to divest not only the 34 Thrift drug stores and the Rite Aid stores in North Carolina and Charleston, South Carolina, but also the remaining sixty-three (63) Rite Aid stores in South Carolina, representing the entire package of Rite Aid stores that J.C. Penney/Thrift had proposed to acquire. Further, under the proposed Order, J.C. Penney/Thrift is prohibited from acquiring any of the Rite Aid stores in North Carolina and Charleston, South Carolina until it has entered into an agreement, approved by the Commission, to divest those stores. The Commission has not required a hold separate agreement in this case because the proposed Order contemplates a short divestiture time period; the appointment of a trustee should the divestiture not occur within the prescribed time period; and a prohibition against J.C. Penney/Thrift's acquiring any of the North Carolina and the Charleston, South Carolina Rite Aid stores until it has entered an agreement with a Commission-approved purchaser to divest those stores.

Under the provisions of the proposed Order, J.C. Penney/Thrift is also required to provide the Commission with a report of compliance with the

divestiture provisions of the Order within thirty (30) days following the date this Order becomes final, and every thirty (30) days thereafter until J.C. Penney/Thrift has fully complied with the divestiture provisions of the proposed Order.

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.

[FR Doc. 96-31803 Filed 12-13-96; 8:45 am]

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[File No. 942-3251]

Natural Innovations, Inc.; William S. Gandee; World Media T.V., Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, these two consent agreements, accepted subject to final Commission approval, would, among other things, require the respondents to have scientific proof to back up any pain relief or other health or medical benefit claims they make in the future. The agreement settles Commission allegations stemming from the advertising and sale of Natural Innovation's "The Stimulator," a purported pain relief device widely advertised in an informal titled "Saying No To Pain," which was created and distributed by World Media.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lesley Anne Fair, Federal Trade Commission, S-4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-3081.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following