boating safety statutes. In addition, the advertising is inconsistent with the provisions of the Beer Institute Advertising and Marketing Code, which provides that ''[b]eer advertising . . . should not portray or imply illegal activity of any kind,'' and ''[b]eer advertising . . . should not associate or portray beer drinking before or during activities which require a high degree of alertness or coordination.''

Paragraph five of the complaint describes the challenged advertisements as depicting individuals drinking Beck's beer while engaging in acts that require a high degree of alertness and coordination to avoid falling overboard. This conduct is inconsistent with the Beer Institute's own Advertising and Marketing Code and may also violate federal and state boating safety laws. It alleges that the risks associated with such activities while boating are greatly increased by consumption of alcohol. It notes that even low and moderate blood alcohol levels sufficiently affect coordination and balance to place passengers at increased risk of falling overboard and drowning, and that many persons are unaware of this increased risk. This paragraph also notes that as many as one-half of all boating fatalities are alcohol-related, including an average of 60 recreational boat fatalities annually from falling overboard while drinking. Accordingly, respondent's depiction of this activity in its advertisements is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. As a result, the complaint alleges that respondent's practice was an unfair act or practice.

The Commission has substantial concern about advertising that depicts conduct that poses a high risk to health and safety. As a result, the Commission will closely scrutinize such advertisements in the future.

The consent order contains provisions designed to remedy the violations charged. Part I of the order prohibits respondent from future dissemination of the television advertisements attached to the complaint as Exhibits A and B, or of any other advertisement that a) depicts a person having consumed or consuming alcohol on a boat while engaging in activities that pose a substantial risk of serious injury from falling overboard or b) depicts activities that would violate 46 U.S.C. 2302(c). The cited statute, 46 U.S.C. 2302(c), makes it illegal to operate a vessel under the influence of alcohol or illegal drugs.

The remaining parts of the order contain standard record keeping (Part II); order distribution (Part III); notification of corporate change (Part IV); compliance report filing (Part V) and sunset (Part VI) provisions.

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

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Mozelle W. Thompson

Today, the Commission voted to accept a consent agreement with Beck's North America, Inc. (''Beck's'') in File Number 982–3092 on grounds that Beck's disseminated or caused to be disseminated unfair television advertisements. I joined in that vote. I also believe, however, that the advertisements at issue were deceptive. The Commission has defined deceptive advertising as ''that which contains a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.'' [1] In my view, the Beck's television advertisements if this definition.

First, I believe the advertisements imply to reasonable targeted consumers that consuming alcohol while boating is appropriate and/or safe. In fact, the actors begin one advertisement by stating ''Wanna have some fun? Mix hot music, cool people, [a] big boat and a great German beer.'' Unfortunately, the advertisement does not disclose that consuming alcohol while boating poses a heightened danger not only to the boat operator, but also to passengers. It also fails to disclose that such behavior may violate applicable Federal boating laws.[2] Second, as evidenced by the actors and the language portrayed in the advertisement, I believe that the message is targeted at a youthful audience. Accordingly, it can be justifiably inferred that a reasonable youthful consumer could easily be deceived by not appreciating the danger of imitating the behavior featured in the television advertisements.

For these reasons, I would find that the Beck's advertisements were deceptive as well as unfair under Section 5 of the FTC Act.

[1] *See Cliffdale Associates, Inc.,* 103 F.T.C. 110, 176 (1984) *Appeal dismissed sub nom., Kovan v. FTC,* No. 84–5337 (11th Cir. Oct. 10, 1984) (*Deception Statement*).

[2] This problem has become so serious that the U.S. Coast Guard has recently launched a new campaign to better inform the public of the dangers of mixing boating and alcohol.

[FR Doc. 98–21612 Filed 8–11–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0065]

Fair Allocation System, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 13, 1998.

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

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, D.C. 20580, (202) 326–2932; or Charles Harwood, Federal Trade Commission, Seattle Regional Office, 915 Second Avenue, Suite 2896, Seattle, WA 98174, (206) 220–4480.

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 complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 5, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.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, 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 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 a proposed consent order from Fair Allocation System, Incorporated (''FAS''). FAS is an organization of twenty-five automobile dealerships from five Northwest states that was formed to address dealer concerns over the marketing practices of automobile manufacturers. In particular, FAS members were concerned about an automobile dealership—Dave Smith Motors of Kellogg, Idaho—which was attracting customers from around the Northwest and taking substantial sales from FAS members by selling cars for low prices and marketing them on the Internet.

According to the complaint, because of these concerns, the members of FAS collectively attempted to force Chrysler to change its vehicle allocation system. Chrysler allocates vehicles based on the dealer's total sales; FAS members wanted Chrysler to allocate vehicles based on the expected number of sales from a dealer's local area, which would have substantially reduced the number of cars available to a dealership like Dave Smith Motors that drew customers from a wider geographic area. According to the complaint, the members of FAS threatened to refuse to sell certain Chrysler vehicles and to limit the warranty service they would provide to particular customers unless Chrysler changed its allocation system so as to disadvantage dealers that sold large quantities of vehicles outside of their local geographic areas.

The compliant charges that FAS's agreements or attempts to agree with its dealer members to coerce Chrysler violate Section 5 of the FTC Act, as amended, 15 U.S.C. 45. According to the complaint, FAS members constitute a substantial percentage of the Chrysler, Plymouth, Dodge, Jeep and Eagle dealerships in eastern Washington, Idaho, and western Montana, and FAS's threats would have harmed competition and consumers in those areas. In particular, FAS's efforts would have deprived consumers of local access to certain Chrysler models and to warranty service, and would have reduced competition among automobile dealerships, including rivalry based on price or via the Internet.

The goal of the boycott was to limit the sales of a car dealer that sells cars at low prices and via a new and innovative channel—the Internet. FAS's threatened action against Chrysler is a *per se* illegal group boycott. In *United States* v. *General Motors,* 384 U.S. 127 (1966), the Supreme Court held *per se* illegal a comparable dealer cartel in Los Angeles that sought to prevent other area dealers from selling automobiles through discount brokers. Since General Motors, the Supreme Court has twice cited its *per se* condemnation of dealer cartels with approval. *See Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 58 n. 28(1977); *Business Electronics* v. *Sharp Electronics,* 485 U.S. 717, 734 n. 5 (1988). Such dealer cartels are ''characteristically likely to result in predominantly anticompetitive effects,'' *Northwest Wholesale Stationers* v. *Pacific Stationery & Printing Co.,* 472 U.S. 284, 295 (1985), because they aim to limit competition while producing no plausible efficiencies.

Even where an agreement otherwise appears to fall in a category traditionally analyzed under a *per se* rule, a more extensive, rule-of-reason analysis may be necessary if there are plausible efficiency justifications for the conduct. *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.,* 441 U.S. 1 (1979). Here, however, there appear to be no plausible efficiencies that would justify the dealers' conduct. Even if there were reason to believe that Dave Smith Motors, or similarly operated dealerships, were free-riding [1] on the efforts of more traditional dealers, no boycott would be needed to deal with the problem. Manufacturers have strong incentives to prevent free-riding by a few of their dealers at the expense of the rest, and can be expected to be responsive to complaints from their dealers acting individually if the free-riding concerns are genuine. In the absence of an efficiency justification that plausibly explains why concerted action is necessary, extensive searches for and investigations of justifications for such conduct would be unwarranted, and would only add a layer of complication and delay.

In this case, the absence of a justification is especially clear. Chrysler has previously rejected demands that it change its allocation system and publicly lauded Dave Smith Mothers. *See* ''Chrysler Corp. Will Let Dealers Shoot It Out in Cyberspace,'' Automotive News, p. 1, January 27, 1997. Indeed, Chrysler's Vice President of Sales and Marketing has flatly stated that Chrysler believes the best way to increase its sales penetration is to provide dealers as much product as they can sell, no matter where the customer comes from. *See* ''Chrysler VP Has Calming Effect,'' Automotive News, p. 28, February 10, 1997. Even if Chrysler had acceded to the boycotters' demands, however, that would not have justified a horizontal boycott by the dealers.

The proposed consent order would prohibit FAS from participating in, facilitating, or threatening any boycott of or concerted refusal to deal with any automobile manufacturer or consumer. There is nothing in the proposed order, however, that would prohibit FAS from informing automobile manufacturers about the views and opinions of FAS members.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from 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 purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement containing the proposed consent order to modify in any way its terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

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BILLING CODE 6750–01–M

[1] ''Free-rider'' concerns may arise where two distributors sell the same product, but provide different levels of service in connection with the sale of that product. For example, one distributor may have a full-service showroom and the other may sell out of a warehouse that offers no service. Consumers may visit the showroom, learn all they need to know about the product, and then purchase the produce from a ''no-service'' discounter. The problem is that over time the full-service distributor may lose its incentive or financial ability to provide the services, to the detriment of both the manufacturer and the consumers who value those services. Free-rider concerns generally do not exist if the full-service distributor is compensated for its services.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case: