## UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION



)
) PUBLIC
) Docket No. 9300 ) ) )

To: Commission

## COMPLAINT COUNSEL'S RESPONSE TO PITT-DES MOINES' BRIEFING ON COMPLAINT COUNSEL'S MOTION FOR CLARIFICATION

Complaint Counsel submit this response to Pitt-Des Moines, Inc.'s April 6, 2005,

Briefing on Complaint Counsel's Motion for Clarification ("PDM Briefing"), which was filed in response to the Commission's order of March 15, 2005.

In its brief, Pitt-Des Moines presents certain issues concerning the feasibility of granting a license that would allow the Acquirer of the Relevant Business divested pursuant to the Commission's Final Order to use the "Pitt-Des Moines" or "PDM" names or marks in connection with the Relevant Business. Although Pitt-Des Moines suggests that it may be necessary or advisable to obtain certain third-party consents for any such license to an Acquirer, it further states that "it would be in a position to sell or license" such rights "for a limited or unlimited period of time." PDM Briefing at 13. Accordingly, it does not appear that there are any insurmountable legal barriers to such a license.

Complaint Counsel believe that Respondents should be required to divest and convey the "Pitt-Des Moines" and "PDM" name and marks to an Acquirer on a permanent and exclusive basis for use in conducting the Relevant Business as divested. Therefore, in view of Pitt-Des Moines' assessment of the legal feasibility of such licensing, Complaint Counsel believe that Respondents are fully capable of taking such actions as are necessary to protect the name and marks pending divestiture and to transfer them to the Acquirer on a permanent and exclusive basis for use in the Relevant Business.

DATED: April 11, 2005

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

## I hereby certify that I today caused:

One original and twelve copies of COMPLAINT COUNSEL'S RESPONSE TO PITT-DES MOINES' BRIEFING ON COMPLAINT COUNSEL'S MOTION FOR CLARIFICATION to be served by hand delivery and one copy to be served by electronic mail upon:

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One copy by facsimile and by first-class mail upon:

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Dated: April 11, 2005