

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.

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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 infomercial 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

Analysis to Aid Public Comment describes the terms of the two consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for December 5, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." Paper copies 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 has accepted, subject to final approval, agreements to a proposed consent order from Natural Innovations, Inc. ("Natural Innovations") and its officer and director, Ohio chiropractor William S. Gandee ("Dr. Gandee"), and a proposed consent from World Media T.V., Inc. ("World Media") (collectively "respondents").

The proposed consent orders have 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 agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Commission's complaint against respondents Natural Innovations and Dr. Gandee alleges that they deceptively advertising the Stimulator, a purported pain relief device, primarily through an infomercial entitled "Saying No To Pain." The Stimulator is a syringe-shaped device that purports to relieve pain by emitting an electrical spark when applied to the skin. The complaint against World Media TV alleges that it served as an advertising agency, production company, and media buyer for Natural Innovations, Inc., and participated in the creation and dissemination of advertisements for the Stimulator.

The complaints further allege that respondents made unsubstantiated representations that the Stimulator will significantly relieve or eliminate a wide variety of pain, including

musculoskeletal pain, carpal tunnel syndrome, abdominal pain, pain caused by allergies and sinus conditions, diverticulosis, menstrual cramps, and headaches, including but not limited to occipital, frontal, migraine, cluster, and stress headaches, and headaches caused by benign tumors.

The complaints also allege that respondents represented without substantiation that pain relief from the device is immediate; that the device provides long-term relief; and that the device is as effective as, or more effective than, prescription and over-the-counter medications, physical therapy, chiropractic treatment, acupuncture, acupressure, and reflexology.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future. Part I of both orders requires respondents to possess well-controlled clinical testing to support any claim that a device relieves or eliminates pain, relieves pain immediately, or is as effective as or better than over-the-counter pain medication or physical treatments. For representations that a device is effective for temporary relief of minor aches and pains due to fatigue or overexertion, easing and relaxing tired muscles, or temporary increase of local blood circulation, Part I requires that respondents possess competent and reliable scientific evidence.

Part II requires respondents to possess competent and reliable scientific evidence for any claims about the health or medical benefits of any product.

Part III of both orders forbids respondents from representing that an endorsement represents the typical experience of users of the product unless respondents possess competent and reliable scientific evidence substantiating that representation or they disclose clearly and prominently either the results that consumers can generally expect or that consumers should not expect to achieve results similar to the endorsers.

Part IV allows respondents to make representations for any drug that are permitted in labeling for that drug under any tentative or final FDA standard or under any FDA-approved new drug application.

Parts V through VIII and X of the Natural Innovations Order and Parts V through VII and IX of the World Media Order relate to respondents' obligations to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in Natural Innovation's or

World Media's corporate structure; to notify the Commission of changes in Dr. Gandee's employment or business affiliations; to provide copies of the orders to certain Natural Innovations and World Media personnel; and to file compliance reports with the Commission. Part IX of the Natural Innovations Order and Part VIII of the World Media Order provide that the orders will terminate after twenty years under certain circumstances.

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

Donald S. Clark,

*Secretary.*

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[File No. 952-3357]

**Premier Products, Inc.; T.V. Products, Inc.; T.V.P. Corporation; Michael Sander; Issie Kroll; 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 prohibit, among other things, the Florham Park, New Jersey-based company from misrepresenting, with respect to any product involving the storage or preparation of food, the risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using the product; the amount of time it may take to defrost, thaw, or prepare food items using the product; the process by which the product achieves any claimed defrosting, thawing, or preparation times; or the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research. The agreement settles allegations stemming from advertisements for Premier's "Miracle Thaw" food thawing tray.

**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.