

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

Part I of the proposed order prohibits respondent from falsely representing that any computer peripheral equipment, as defined in the order, has been rated, endorsed, recommended, reviewed or evaluated by any person or publication.

As fencing-in relief, Part II of the proposed order prohibits respondent, when advertising computer peripheral equipment, from misrepresenting the existence, contents, validity, results, conclusions, interpretations or purpose of any test or study. Part III provides that, if respondent makes any representation about the performance or attributes of any computer peripheral equipment, the representation must be true and respondent must possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, to substantiate the representation.

The proposed order also requires respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to its employees involved in the preparation and placement of respondent's advertisements, or in communication with respondent's customers or prospective customers; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the 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 and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

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[File No. 951 0009]

### **The Penn Traffic Company; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final

Commission approval, would permit, among other things, the Penn Traffic Company to acquire a number of Acme supermarkets from American Stores Company, but would require it to divest, to a Commission approved acquirer or acquirers within twelve months, one supermarket in each of the three Pennsylvania areas designated (Towanda, Mount Carmel, and Pittston). If the divestitures were not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transactions. In addition, the consent agreement would require the respondent, for ten years, to obtain Commission approval before acquiring any interest in any entity that owns or operates a supermarket in any of the three areas designated.

**DATES:** Comments must be received on or before April 14, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Ronald Rowe or Marimichael Skubel, FTC/S-2105, Washington, D.C. 20580. (202) 326-2610 or 326-2611.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 45 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following 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. 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)).

#### **Agreement Containing Consent Order**

The Federal Trade Commission ("Commission") having initiated an investigation of The Penn Traffic Company's ("Penn Traffic") proposed acquisition of certain assets of American Stores Company (American), and it now appearing that Penn Traffic hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts, and providing for other relief,

*It is hereby agreed* by and among proposed respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Penn Traffic Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1200 State Fair Boulevard, Syracuse, New York 13221-4737.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

- any further procedural steps;
- the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The