

to the Commission a report of their compliance with the cease and desist 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.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 95-96 Filed 1-3-95; 8:45 am]

BILLING CODE 6750-01-M

[Dkt C-3544]

Columbia/HCA Healthcare Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, the hospital company to complete its acquisition of Medical Care America, but requires it to divest the Alaska Surgery Center within twelve months to a Commission-approved entity. If the transaction is not completed in the designated time frame, the respondents are required to permit the Commission to appoint a trustee. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring an interest worth more than \$1 million in any outpatient surgical services facility in Anchorage, Alaska, and before selling such an interest to any entity that operates an outpatient surgical services facility in Anchorage, Alaska.

DATES: Complaint and Order issued December 6, 1994.¹

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S-3115, Washington, DC 20580, (202) 326-2756.

SUPPLEMENTARY INFORMATION: On Friday, September 23, 1994, there was published in the *Federal Register*, 59 FR 48883, a proposed consent agreement with analysis in the Matter of Columbia/HCA Healthcare Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,
Acting Secretary.

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[File No. 932 3357]

Abovo, Inc., et al.; 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 prohibit, among other things, a Massachusetts company and its president from making false or unsubstantiated performance claims about any communication aid they offer in the future, and from making representations concerning the efficacy of their communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondents have competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before March 6, 1995.

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: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 744-7920.

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 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 Practices (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation ("proposed respondents"), and it not appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Abovo, Inc., by its duly authorized officer, and Susan L. Lakso, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Abovo, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Cabotville Industrial Park, 165 Front Street, 4th Floor, B Building, in the City of Chicopee, State of Massachusetts.

Proposed respondent Susan Lakso is an officer of said corporation. She formulates, directs and controls the policies, acts and practices of said corporation and her address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

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 respondents, 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 respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

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 proposed respondents, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. The term "Communication Aid" means any alphabet display chart, computer, typewriter or other device, which is created or marketed for use by persons with communication impairments, including the "Abovo Personal Communicating Device."

B. The term "Facilitated Communication" means any method or technique or process that entails an individual providing physical support to a person with a communication aid.

I

It is ordered that respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product enable autistic and/or mentally retarded individuals to communicate through facilitated communication.

II

It is further ordered that respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product enables individuals with disabilities to communicate through facilitated communication, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this

Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the performance or attributes of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence, that substantiates such representation.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent that may affect compliance obligations under this Order such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

VI

It is further ordered that the individual respondent shall, for a period of five (5) years after the date of service of this Order upon her, promptly notify the Commission, in writing, of her discontinuance of her present business or employment and of her affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII

It is further ordered that the corporate respondent shall, within sixty (60) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, licensees, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of three (3) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, licensees, independent contractors, and employees.

VIII

It is further ordered that respondents shall, within sixty (60) days from the date of service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Abovo, Inc., a Massachusetts corporation, and Susan L. Lakso, individually and as an officer of the corporation.

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 and take other appropriate action or make final the agreement's proposed order.

This matter concerns the advertising of the "Abovo Personal Communicating Device" ("Above PCD"), a communication aid for individuals with disabilities. The Commission's complaint charges that respondents' advertising contained false and unsubstantiated representations concerning the efficacy of this communication aid in enabling individuals with communication disabilities to communicate through facilitated communication. Facilitated communication is a technique that, among other things, entails an individual providing physical support to a person with a communication impairment, while that person types or points to a communication aid, such as the Abovo PCD.

Specifically, the complaint alleges that respondents falsely represented that the Abovo PCD enables autistic and mentally retarded individuals to communicate through facilitated communication. The complaint also alleges that the respondents lacked substantiation for its claim that the Abovo PCD enables individuals who are disabled as a result of apraxia, motor speech disorders, RETT Syndrome, stroke, tracheotomy, laryngeal cancer, traumatic brain injury, Alzheimer's disease, Parkinson's disease, multiple sclerosis, muscular dystrophy, and/or cerebral palsy to communicate through facilitated communication.

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

Part I of the proposed order prohibits respondents from misrepresenting that any communication aid enables autistic or mentally retarded individuals to communicate through facilitated communication.

As fencing-in relief, Part II of the proposed order provides that, if respondents represent that a communication aid enables individuals with disabilities to communicate through facilitated communication, the representation must be true and respondents must possess competent and reliable scientific evidence that substantiates the representation. In addition, Part III of the proposed order prohibits respondents from representing the performance or attributes of a communication aid unless they possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific

evidence, to substantiate the representation.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to their employees involved in the preparation and placement of respondents' advertisements, or in communication with respondents' customers or prospective customers; to notify the Commission of any change in the corporate structure that might affect compliance with the order; to notify the Commission of certain changes in the business or employment of the named individual respondent; 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.

Benjamin I. Berman,

Acting Secretary.

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[Dkt C-3545]

Chemopharm Laboratory Inc., d/b/a CP Industries; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Utah corporation that markets the ice melting product, Superior Sno-N-Ice, from making any environmental benefit claim about any product unless it possesses and relies on competent and reliable scientific evidence to substantiate the claims. In addition, the respondent is prohibited from misrepresenting the existence or contents of any test or study.

DATES: Complaint and Order issued December 6, 1994.¹

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Mary Tortorice, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-8156.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.