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April 26, 1993

Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
Washington, DC 20530

Dear Assistant Attorney General:

Pursuant to the provisions of 28 C.F.R. § 50.6, The Health and Personal Care Distribution Conference, Inc. ("Conference"), on behalf of itself and its members identified in Appendix A hereto, hereby respectfully requests a review of the following described proposed business conduct and a statement of the Department's current enforcement intentions with respect thereto.

#### Background

Members of the Conference are engaged in the distribution of drugs, medicines, toilet preparations and related articles to wholesale and retail customers who stock such products for resale or for direct use. Among other membership services, the Conference endeavors to disseminate information regarding improved technology and techniques for the transportation and distribution of its members' goods, all for the purpose of improving the quality and minimizing the cost of distribution.

The Conference frequently pursues those goals by monitoring the rate and rules changes in public tariffs of motor common carriers, since motor carriage comprises the primary means by which Conference members' products are distributed. For example, when regulated motor common carriers publish collective rate increas-

es,<sup>1/</sup> the Conference reviews such increases and, when appropriate, communicates its views to the Interstate Commerce Commission.

Over the past decade, the motor carrier rates charged for health care products, as well as those for all other commodities, have moved largely away from collectively made motor common carrier rates and toward individual common carrier rate initiatives and motor contract carriage. Accordingly, there is now less uniformity in transportation performance than previously.

Likewise, as part of the movement toward total quality performance, more emphasis is being placed by the Conference's members upon improvements in stocking, warehousing, order filling and customer service. All of the foregoing, as well as other factors, highlight the need for new data bases upon which Conference members can make comparative performance assessments, or so-called "benchmarking" analyses, as part of the movement toward improving customer service.

#### Proposed Business Conduct

The Conference proposes to undertake an ongoing "benchmark" project by gathering input from its members. Benchmarking is a technique which has gained growing recognition as a means for industry members to improve efficiency and quality control by analyzing comparable products or services in order to identify areas where improvement is attainable.<sup>2/</sup>

Using information to be gathered from its members, the Conference proposes to develop and utilize a benchmarking project which will (1) allow participatory input by Conference members on a voluntary basis, without charge, (2) rely upon a third party as the Conference's exclusive agent to develop and mail questionnaires to participants, to receive confidential questionnaire responses from participants, and to organize and collate the questionnaire responses in an aggregated or similar manner which will shield individual participants from identification, (3) publicize the

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<sup>1/</sup> Under the provisions of 49 U.S.C. § 10706, the Interstate Commerce Commission is authorized to confer antitrust immunity on certain collective actions taken by motor common carriers. The collective tariff actions referred to in the text result from such grants of antitrust immunity.

<sup>2/</sup> Examples of publications describing benchmarking and its use as an efficient tool are "Beg, Borrow -- and Benchmark," Business Week, November 30, 1992; "Benchmarking: Measuring Yourself Against," Beverly Geber, Training, Lakewood Publications, Inc., November 1990.

existence of survey results through press releases and other trade media contacts, and (4) make survey results available to participating Conference members without charge and to others, whether non-participating Conference members or non-Conference members, both with and without charge. All survey result distributions will be labelled with the words, "For Information Only" or with similar words.

More specifically, the procedure which the Conference proposes is to develop a "core" set of benchmarking questions which will be administered to participating Conference members once or twice a year, probably in January and July. For the questionnaire administered in July, a set of "Special Issue" questions may be developed each year, depending on topics of interest to the membership at that time. The responses to each questionnaire will be submitted to an independent organization, where they will be electronically encoded and any identification of a specific participant's answers will be removed.

Although the ultimate content of the benchmarking questionnaire has not yet been established, it is anticipated that the questionnaire will cover the following and/or similar topics for each survey period:

**Distribution - Customer Service Performance**

Percent Item Fill Rate on Orders from Customers

Percent Orders Shipped Complete

Average Order Cycle Time (days)

Percent Items Damaged

Percent of Invoices Disputed

- (a) For quantity discrepancy
- (b) For price discrepancy
- (c) For promotion discrepancy

Percent Orders Delivered on Time

Percent Pickup/Shipping Errors

**Logistics Operations Performance**

Inventory Turnover Rate

No. Days of Inventory Available

Outbound Freight Costs Per CWT

Units Shipped Per Employee

No. Orders Entered Per Person

Total Logistics Costs as Percent of Sales

Inventory Carrying Costs (Percent of Inventory Value)

Order Processing Cost Per Unit

**Organization/Personnel Issues**

Customer Inquiries Are Taken By (Check One)

Any Available Person

Person Assigned to the Contract

Person Assigned to Geographical Area

What Percentage of Customer Service Personnel Are Classified  
As Supervisory Employees?

How Much Was the Training Budget for Your Personnel Per  
Employee?

What Percentage of Customer Inquiries Are Resolved In:

One Call \_\_\_%

Two Calls \_\_\_%

Three or More Calls \_\_\_%

**Customer Requirements/Expectations**

Do You Formally Measure Customer Requirements or Expectations  
For Logistics Service:

\_\_\_ Yes                    \_\_\_ No

What Is Your Typical Customer Requirement/Expectation For:

Percent Item Fill Rate \_\_\_%

Percent Orders Shipped Complete \_\_\_%

Order Cycle Time \_\_\_% Days

What Percent of Your Customers Require Delivery to a  
Specific Appointment Time:

\_\_\_%

What Percent of Your Customers Deduct or Charge:

For Missed Delivery Appointments \_\_\_%

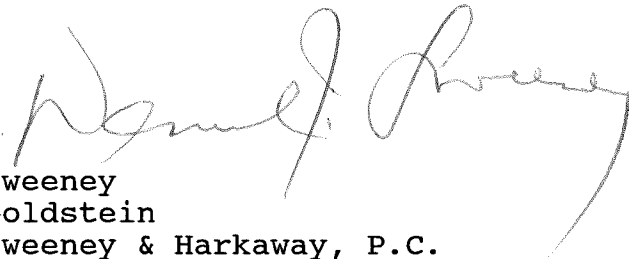
For Incomplete Orders \_\_\_%

For Incorrect Invoices \_\_\_%

For Other Service Problems \_\_\_%

We will be pleased to answer any questions which your office  
has regarding the proposed business conduct described above.

Sincerely,



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Attorneys for  
The Health and Personal Care  
Distribution Conference, Inc.

/rmm

## APPENDIX A

Alberto-Culver Company  
American Cyanamid  
American Home Products  
Avon Products  
Bristol-Myers Squibb  
Beiersdorf, Inc.  
Berlex Laboratories  
Block Drug  
Boehringer Ingleheim Ltd.  
Bristol-Myers Squibb Company  
Bristol-Myers Squibb Pharmaceuticals  
Burroughs Wellcome Company  
Carter Wallace, Inc.  
CasChem, Inc.  
Chattem, Inc.  
Chesebrough Ponds, Inc.  
Church & Dwight Co., Inc.  
Clairol, Inc.  
Conair Corporation  
Connaught Laboratories  
DEP Corporation  
Dial Corporation  
E. T. Browne Drug Company, Inc.  
Eli Lilly Company  
Fisons Pharmaceuticals  
Fujisawa, USA, Inc.  
Gillette Company Personal Care  
Gillette Company  
Glaxo Inc.  
Healthdyne, Inc.  
Helene Curtis Industries, Inc.  
Hoechst-Roussel Pharmaceuticals  
Hoffman La Roche  
Huntington Laboratories  
ICI Pharmaceutical Group  
Johnson & Johnson Consumer Products  
Johnson & Johnson Hospital Services  
Johnson & Johnson Personal Products Company  
Lederle Laboratories  
Lemmon Company  
Marion, Merrell-Dow, Inc.  
McGaw, Inc.  
McNeil Consumer Products  
Mead Johnson Nutritional Group  
Mem Company, Inc.  
Mennen Company  
Merck & Co., Inc.  
Merle Norman Cosmetics  
Merrell-Dow Pharmaceuticals  
Private Formulations, Inc.

Proctor & Gamble Pharmaceutical  
Oral-B Laboratories  
Ortho/McNeil Pharmaceuticals  
Pfizer, Inc.  
Picker International  
Polymer Technology Corporation  
Procter & Gamble  
Rhone-Poulenc Rorer  
Sandoz Consumer Products  
Sandoz Pharmaceuticals  
Schering Corporation  
Schering-Plough Corporation  
SmithKline Beecham Consumer Brands  
SmithKline Beecham Pharmaceuticals  
Sterling Drug  
Syntex Laboratories  
Upjohn Company  
ViJon Laboratories  
Vistakon, Inc.  
W. F. Young, Inc.  
Warner Lambert Company  
Westwood Squibb Pharmaceuticals  
Whitehall-Robins Company  
Wyeth Ayerst Laboratories  
Zimmer, Inc.