

STATE OF MICHIGAN
DEPARTMENT OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

In the Matter of:

AG File No.200011755

MCNEIL-PPC, INC.,

A subsidiary of Johnson & Johnson,
Doing Business As:
<http://www.itsmybody.com>,

Respondent.

NOTICE OF INTENDED ACTION

To: MCNEIL-PPC, INC.
Van Liew Ave.
Milltown, PA 08850

AGENCY.COM, Web site registrant

Attention: Tim Newbrough
Networking and Computing Services
Johnson & Johnson
1003 US Highway 202
Raritan, NJ 08869
FAX – 908-685-3505

JENNIFER M. GRANHOLM, Attorney General of the State of Michigan, pursuant to the provisions of the Michigan Consumer Protection Act, MCL 445.901 et seq., MSA 19.418(1) et seq., gives ten (10) days notice to MCNEIL-PPC, INC., doing business as www.itsmybody.com before filing a lawsuit under the Act.

Before suit is filed, MCNEIL-PPC, INC. will have an opportunity to confer with the Attorney General, or her designated representatives, regarding its intention to cease and desist from engaging in certain unfair, unconscionable or deceptive methods, acts, and practices in the conduct of trade or commerce and to provide remedies for its past conduct.

I. ALLEGATIONS

1. MCNEIL-PPC owns or controls the content of the web site www.itsmybody.com.

2. MCNEIL-PPC is a subsidiary company of Johnson & Johnson. According to Johnson & Johnson's 1999 Annual report, Personal Products Company (PPC):

Develops, produces and market innovative oral health, women's health and sanitary protection products. It is a leader in the oral health market with a full line of floss, rinse and toothbrush products. Personal Products is also a leader in women's health products with nonprescription and prescription vaginal yeast cures, personal lubricants, urinary pain relief tablets and vaginal contraceptives. The company's comprehensive product line of sanitary protection products includes feminine incontinence products, pantliners, tampons and maxi pads.

http://www.jnj.com/annual/99_annual/jj_99_ar.pdf (Exhibit A)

3. MCNEIL-PPC's web site at www.itsmybody.com appears to be targeted towards teenage girls and young women. The purpose of the site is to provide information about reproductive health in categories that are divided into "Puberty to 18" and "The Adult Years."

4. Visitors to the site are also given the opportunity to submit their name, e-mail address, and street address in order to receive product samples. http://www.itsmybody.com/nfmy_product/stayfree/free_sample_sf.html. *While the form on this web page asks for the visitor's age, the site accepts the submission of this personal information even from children under the age of 13 without parental consent.* (See Exhibit B.)

5. Personally identifiable information on the form at http://www.itsmybody.com/nfmy_product/stayfree/free_sample_sf.html does not go directly to www.itsmybody.com, but rather is submitted in its entirety to a third party at the e-mail address edb@agency.com.¹

6. The fact that the personally-identifiable information being submitted in the product sample request form, whether by persons over or under the age of 13, is being submitted invisibly to a third party is not disclosed anywhere on the site. Agency.com not mentioned as the recipient of the personal information.

7. Web pages at <http://www.itsmybody.com> contains code that directs consumers' browsers (commonly Microsoft's Internet Explorer or Netscape's Communicator) to interact with DoubleClick, Inc.

¹ This occurs inside the code of the product sample form. The code below indicates that the hidden recipient of the form is not www.itsmybody.com, but the email address edb@agency.com:

```
<FORM NAME="" ACTION="/cgi-bin/free_sample2.cgi" METHOD="GET">  
<INPUT TYPE="hidden" NAME="recipient" VALUE="edb@agency.com">
```

8. DoubleClick is in the business of providing various internet services to web publishers and advertisers, including providing online advertising and tracking consumers' browsing behavior across web sites and over time.

9. Use of Cookies in General.

a. "Cookies" are small text files that web sites create and store on users' hard drives. A web site's servers may write cookies and read existing cookies that the web site has previously placed on a user's computer. While "session cookies" expire after the user's Internet session ends, other cookies, called "persistent cookies," are stored on a user's hard drive and may be retrieved during future browsing sessions by the web site that set the cookies.

b. A cookie can contain any sort of information that a web site decides to place in the file. A cookie's value might contain various pieces of information that are not unique to a particular user, such as screen size and color preferences. Cookies can also store personal information or contain a unique identifier with which a web site can associate a user's browsing activity over time. While some cookies with unique identifiers may do nothing more than keep track of a user's interests or purchases, a web site can also use cookies containing unique identifiers to monitor a user's browsing behavior.

c. While many cookies are written by the web site that a consumer has chosen to visit, consumers also receive "third-party cookies" written by other parties. One very common way for third-party web sites to read and write cookies occurs when a user's browser is directed to retrieve an advertisement from the third party's server. For example, a consumer visiting an online bookstore may receive a cookie not only from the bookstore, but also from a third-party online advertiser that is merely delivering graphic banner ads on the page the user has chosen to visit. Such third-party advertisers can invisibly exchange cookie information with a consumer's browsing software *whether or not the consumer clicks on the banner ad*.

10. Use of Cookies and Web bugs in Online Advertising and Tracking

a. "Web bugs" also known as "pixel tags," "clear GIFs" and "invisible GIFs," are invisible tracking devices embedded in the source code of web pages in order to allow third parties to track consumers' browsing behavior.

b. DoubleClick typically assigns unique identifiers ("unique ID")² to their cookies. The unique ID is an alphanumeric string that is associated with specific

² For example, a cookie proposed for placement by DoubleClick during a visit to <http://www.itsmybody.com> by a member of the Attorney General's office bore the value 80000001eb463aa. This appears to contain a unique identifier assigned by DoubleClick. This cookie was proposed to persist for 30 years.

browsing software on a particular consumer's computer (or, if there are different user identities, e.g., different Windows log-on names, on a computer, the cookie is associated with a given user profile). DoubleClick can use the unique ID it places on consumers' computers to compile a profile of the consumer's browsing behavior (including a compilation of particular pages visited) by associating such information with the unique ID across web sites and over time.³

c. Internet advertisers, like DoubleClick, and other third parties interact with consumers at a variety of different sites. Such third parties use web bugs in a manner similar to banner ads. Both web bugs and banner ads facilitate the interaction between the advertiser's server and the consumer's browser in order to set and read cookie values. And while both banner ads and web bugs direct the consumers' browsers to retrieve files from the servers of a third party, *the graphic file requested by a web bug is invisible to the consumer*. The sole purpose of a web bug is to cause the consumer's computer to interact with a third party for the purpose of enabling the third party to monitor the consumer's browsing behavior.

d. The use of cookies and web bugs in online tracking makes it important for a web site to disclose to consumers when third-party online advertising companies or tracking services are planting or reading cookies on its visitors' computers.

11. Logging of Static IP Addresses

a. Like the use of persistent cookies, the collection of static IP addresses presents a potential privacy problem. An IP address is a number that is assigned to a consumer's computer each time the computer is connected to the internet, and it is unique to a single computer at a given time. While many consumers subscribe to Internet access services that "dynamically" assign a different IP address within the block of addresses it owns to consumers' computers each browsing session, more and more consumers are using "static" IP addresses from their Internet service providers (ISPs) that remain constant over time. Examples of consumers with static IP addresses are users of cable modems, subscribers to DSL connections, and consumers using many company and educational networks.

b. Since a static IP address, like the value of a persistent cookie, remains constant over time, it is possible for a web site to track a user's browsing behavior by his or her IP address. If the user submits personally-identifiable information, such as name or email address, to the website at some later time, then the web site can identify the owner of the static IP address and associate already-collected information, previously linked only with the IP address, with the user personally.⁴

³ DoubleClick offers consumers the opportunity to receive an "opt-out cookie" at this page: <http://www.doubleclick.net/optout/default.asp>.

⁴ Here is an example of a web site, or collection of web sites, that practices linking previously collected anonymous information associated with later acquired personally-identifiable information. Procter and Gamble's privacy policy, which covers many separate web sites operated by P&G, contains these two

c. For example, consider a consumer with a static IP address who visits a hypothetical large website containing a lot of different types of content. On the first visit, the consumer visits certain sensitive pages containing information about HIV/AIDs, depression, and alcoholism. The server can collect the IP address and associate the pages the consumer has visited with such numbers. On a subsequent visit, the consumer reviews information about training for a marathon and submits a name and email address in order to receive a runner's newsletter. The website has the ability to connect the static IP address with the consumer's name and email address. But, in addition, it can now use the IP address to associate the consumer's prior interest in HIV/AIDs, depression, and alcoholism with that particular consumer, even though the web site could not identify the consumer at the time of the earlier visit. (This discussion of the potential tracking use of static IP addresses applies equally to persistent cookies. A server could track users' activities static IP addresses but also persistent cookies containing a unique ID or even the static IP address itself.)

d. Since IP addresses are parceled in blocks to particular companies and institutions, it is relatively easy for interested parties to make a correlation between IP address and geographic area. If someone were to visit a web site from a static IP address falling within the block of addresses assigned to a corporate entity or public university, the site owner would not need cookies or any other personally identifiable information to infer that the user in question is in a particular city and has some affiliation with a particular corporation or public institution.

e. While consumers are generally unfamiliar with the use of cookies, particularly by invisible third parties, knowledgeable consumers can disable cookies (or third-party cookies selectively) or delete existing cookies on their

separate disclosures. P&G first tells consumers that personally-identifiable information may be merged with other available information about them:

Use of Personally Identifiable Information

We may also enhance or merge personally identifiable information with data obtained from third parties for the same purposes. Procter & Gamble will not give or sell your personally identifiable information to any outside organization for the organization's own use without your consent. Your information may be shared with agents or contractors of Procter & Gamble in connection with services that these individuals or entities perform for Procter & Gamble. Individually identifiable information submitted in connection with employment inquiries will be used only in the application process.

P&G, in a separate paragraph, advises that it may retroactively identify information it gathered about a consumer's browsing habits with that specific consumer if it later becomes able to identify the consumer:

Non-Personally Identifiable Information Collected Automatically

*** Procter & Gamble does not collect personally identifiable information automatically, but we may tie information collected automatically to your previously submitted personally identifiable information.

<http://www.pg.com/privacy.html> (accessed 9.09.00)

computers. But a static IP address cannot be deleted and cannot be easily masked or protected from disclosure. Only the most technically sophisticated consumers are aware of the privacy risks posed by static IP addresses and are capable of taking the complicated steps necessary to prevent their static IP addresses from being handed to a particular web server without their knowledge or permission.

f. The increasing use of static IP addresses by consumers is thus an additional reason why a web sites should disclose to consumers when third-party online advertising companies or tracking services are logging IP addresses or using cookies to interact with consumers' computers.

12. Visitors to www.itsmybody.com, including the teenage female audience towards whom the site is targeted, interact with DoubleClick servers in a way that enables them to retrieve the value of any "cookie" that DoubleClick previously placed on the consumer's hard drive. This previous placement may have occurred without the consumer's knowledge or consent as the consumer visited one of the thousands of sites that DoubleClick serves.

13. Invisible DoubleClick web bugs that read and write cookies with unique IDs are present on www.itsmybody.com on such sensitive pages as:

- The Reproductive System: External Genitals
http://www.itsmybody.com/nfmy_body/r_ext.html
- Pregnancy and Your Period
http://www.itsmybody.com/nfmy_period/pregnancy.html
- Puberty to 18: Visiting Your Gynecologist for the First Time
http://www.itsmybody.com/nfmy_health/p_gyn_visit.html

14. Generally, consumers who visit web sites, including the teenage female audience towards whom www.itsmybody.com is oriented, are unaware that DoubleClick web bugs are causing their browsers to interact with these companies' computers. Only sophisticated users who have taken affirmative steps to direct their browsers not to automatically accept all cookies (and thereby change the default setting in recent versions of Microsoft's and Netscape's browsers) or who have installed special privacy-enhancing software may defeat these companies' attempts to read and/or write unique IDs to their hard drives.⁵

⁵ Even consumers using Microsoft's Internet Explorer 5.0 who have affirmatively directed the browser to display cookie values before cookies are accepted may be unaware that DoubleClick is placing cookies with unique IDs. For example, at a recent visit to www.procrit.com, a user without a prior DoubleClick cookie, the user had directed IE5 to prompt him before accepting cookies. The user was informed only of a DoubleClick cookie containing the non-unique value, "A". But inspection of the cookies the browser had stored, after the close of the browsing session, revealed that DoubleClick had indeed placed a second cookie with a unique ID without the user having been notified.

visit 1: Id 8c2425f4 doubleclick.net/ 0 1468938752 31583413 1638766048 29342162 *

visit 2: Id 8c250913 doubleclick.net/ 0 1468938752 31583413 196966048 29342162 *

15. There is only one item of advertising for a third party on the web site, a banner ad at the home page that links to “The Girls Room” at www.alloy.com, a third party web site that is targeted towards teenagers. Nowhere else on the site is there third party advertising. Particularly at pages devoted to sensitive and personal information such as gynecological visits for teenagers with no visible ads, consumers do not reasonably expect a third party to be present. Yet these pages contain DoubleClick web bugs which are completely invisible to consumers. The use of invisible tracking devices by DoubleClick is not known or expected by visitors.

16. The placement of third-party cookies on the computers of visitors to www.itsmybody.com is clandestine. MCNEIL-PPC knows or should be aware that most consumers who visit the pages at its sites that contain web bugs, including the home page, have no idea that DoubleClick is reading and/or storing a cookie bearing unique IDs on their hard drives. As explained by Netscape:

“[u]nless you have set your preferences so that you will be alerted when a cookie is being stored on your computer, you won't know about it. When you return to a web site, you won't know that a cookie is being read.”

<http://home.netscape.com/security/basics/privacy.html> (accessed on 5/30/00).

17. MCNEIL-PPC's “Your Privacy” statement makes the following claim about privacy on its web site:

Our Promise to You

We will only ask for information that helps us help you. We promise not to sell, rent or disclose this information for use outside of Personal Products Company.

The information you choose to provide allows IT'S MY BODY to fulfill your product sample request. However, if you decide not to provide any information, you can still visit all other portions of the IT'S MY BODY Web site.

Personal Products Company is not responsible for information lost through Internet transmission.

<http://www.itsmybody.com/nfdocs/privacy.html> (Exhibit C).

18. The privacy policy does not disclose the use of invisible web bugs and covert tracking of visitors' browsing behavior by DoubleClick at www.itsmybody.com. It

http://www.procrit.com/hiv/hiv_00.asp (Accessed twice on 5/9/00; test repeated after deleting the cookie acquired on the previous visit).

While the failure to disclose DoubleClick's placement of a cookie with a unique ID may be an artifact of Microsoft's Internet Explorer 5.0, this failure emphasizes the difficulties Internet users face in attempting to become aware of, and take steps to prevent, the monitoring of their browsing behavior by third parties.

does not disclose the fact that all personally identifiable information that is being submitted on the product request form is actually going to a third party, Agency.com.

19. As a general matter, consumers expect that a web site they have chosen to visit will interact with their computers, specifically with their browsing software. Cookies placed by such sites may fall within this expectation for some consumers. (Web sites who place and read their own cookies on visitors' computers, however, should disclose their use of cookies.) But most consumers do not understand or expect that cookies are routinely placed by DoubleClick and other third parties with whom users have not affirmatively chosen to establish an online relationship.⁶

20. The presence of code embedded in the home page at MCNEIL-PPC, INC.'s web site that directs a user's browser to interact with DoubleClick and thereby allows these companies to read and/or place cookies containing unique IDs that can be used to track consumers' browsing behavior across web sites over time, is a material fact for consumers.

21. MCNEIL-PPC, INC. fails to reveal that mere passive browsing by consumers at its web site will cause their computers to interact with DoubleClick which will read and/or place cookies containing unique IDs on consumers' hard drives.

22. As set forth in Section II, below, the Michigan Consumer Protection Act protects consumers against unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce, including a company's failure to disclose material facts to consumers.

23. MCNEIL-PPC's decision to permit DoubleClick to interact with the computers of consumers who visit www.itsmybody.com, including the placement of cookies containing unique IDs, on the computers of Michigan consumers without the knowledge, consent, or authorization of the consumers, violates the Michigan Consumer Protection Act.

24. Other state laws protect consumers' privacy in various ways:

⁶ In a recent study released by the Pew Research Center on August 20, 2000, [Trust and Privacy Online: Why Americans Want to Rewrite the Rules](http://www.pewinternet.org/reports/toc.asp?Report=19), (the report can be viewed or downloaded at <http://www.pewinternet.org/reports/toc.asp?Report=19>), it was reported:

56% of Internet users cannot identify the primary online tracking tool. It is called a "cookie," and it is a text file that is placed on a user's computer by a Web site to help track that user's browsing activities. Despite Americans' high anxiety about being monitored online, only 10% of Internet users have set their browsers to reject cookies.

That means almost 90% of Internet users who shop online are being tracked by cookies and many are unaware that this is happening.

Trust and Privacy Online, 3, 8.

- a. Consumers enjoy a common law right to privacy that protects them from offensive intrusion upon their seclusion and private affairs. Consumers who have not affirmatively consented to share information with DoubleClick while visiting MCNEIL-PPC's site have not voluntarily disclosed the information that DoubleClick collects.
- b. Consumers enjoy a privacy right not to have their names, likenesses, identities, and personal information misappropriated for commercial advantage. MCNEIL-PPC, INC. has allowed DoubleClick to collect information about consumers' browsing behavior at www.itsmybody.com.
- c. Consumers enjoy a protected property interest in their valuable personal information. The tracking of visitors' browsing behavior at retail sites by a third-party attests to the value of the information.
- d. Consumers enjoy a right to be free from trespasses to their chattels. Many consumers are not aware of, and do not expressly or impliedly consent to, third party placement of "cookie" files on their hard drive. MCNEIL-PPC, INC. is allowing DoubleClick to use MCNEIL-PPC's site for this purpose without consumers' awareness. Such cookie placement is therefore unauthorized by the consumer.
- e. Consumers are protected by the Michigan Fraudulent Access to Computers Act, MCL 752.791, et seq., from the unauthorized access of their computers and computer systems for the purpose of altering or acquiring property or otherwise using the service of a computer.
- f. Individuals already receive protection of their privacy under the Michigan Freedom of Information Act that allows a public body to withhold from public disclosure specific personal information about an individual if the release would constitute a clearly unwarranted invasion of that individual's privacy.

II. VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT

MCNEIL-PPC's practices outlined above violate the Michigan Consumer Protection Act.

Section 2(d) of the act provides, in part:

"Trade or commerce" means the conduct of a business providing goods, property, or service primarily for personal, family or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.

Section 3(1) of the Michigan Consumer Protection Act, MCL 445.903(1) defines unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce as follows:

* * *

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

* * *

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

* * *

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

III. VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT

The practices of MCNEIL outlined above violate the Children's Online Privacy Protection Act, 15 U.S.C. 6501-6505. This action taken under the Michigan Consumer Protection Act is not an "action" within the meaning of section 1305 of the Children's Online Privacy Protection Act but serves to place MCNEIL-PPC on notice that the Attorney General may commence such an action if MCNEIL-PPC does not take steps to prevent the collection of personal information from children under the age of 13 without appropriate parental consent.

Section 1302 of the Children's Online Privacy Protection Act provides, in part:

(1) Child: The term 'child' means an individual under the age of 13.

(2) Operator: The term 'operator' --

(A) Means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service

is operated for commercial purposes, including any person offering products or service for sale through that website or online service, involving commerce --

* * *

- (i) among the several states or with 1 or more foreign nations;

* * *

(8) Personal information: The term 'personal information' means individually identifiable information about an individual collected online, including --

- (A) a first and last name;
- (B) a home or other physical address including street name and name of a city or town;
- (C) an email address;
- (D) a telephone number;
- (E) a Social Security number;
- (F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or
- (G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) VERIFIABLE PARENTAL CONSENT.—The term "verifiable parental consent" means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

SEC. 1303. provides:.

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children

SEC. 1305.of the Act authorizes actions by states:

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 1303(b), the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

The Federal Trade Commission has promulgated regulations at 16 CFR Part 312. The Rule provides, in part:

Sec. 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal nformation from and about children on the Internet.

General requirements.

It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or

maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part.

Generally, under this part, an operator must:

(b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (Sec. 312.5);

(c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (Sec. 312.6);

Sec. 312.5 Parental consent.

(a) General requirements.

(1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

IV. AUTHORITY OF THE ATTORNEY GENERAL

Section 5 of the Michigan Consumer Protection Act provides, in part:

When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to section 3, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with the principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent

and knowing violation of section 3 the court may assess the defendant a civil penalty of not more than \$25,000.00.

Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section the attorney general shall notify the person of his intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his usual place of business or, if the person does not have a usual place of business, to his last known address, or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

V. MCNEIL-PPC, INC.'S OPPORTUNITY TO COMPLY WITH MICHIGAN LAW

Within ten (10) days after receiving this Notice, MCNEIL-PPC, INC. has the opportunity to cease and desist the alleged unlawful methods, acts or practices, and to agree to remedy harm caused by its past practices, prior to commencement of a legal action. If MCNEIL-PPC, INC. elects to cease and desist, that fact will be taken into consideration by this office in determining whether to file a lawsuit.

Whether or not MCNEIL-PPC agrees to cease and desist the alleged unlawful practices, within ten (10) days after receiving this Notice, MCNEIL-PPC may request an opportunity to confer with a representative of the Attorney General in person, by counsel or by other representative as to the proposed lawsuit before it is filed.

Instead of filing a lawsuit against MCNEIL-PPC, the Attorney General may accept a formal assurance in accordance with section 6(1) of the Michigan Consumer Protection Act, that the alleged unlawful practices will be discontinued and that corrective action will be taken. Section 6(1) provides:

When the attorney general has authority to institute an action or proceeding pursuant to section 5, [s]he may accept an assurance of discontinuance of a method, act, or practice which is alleged to be unlawful under section 3 from the person who is alleged to have engaged, be engaging, or be about to engage in the method, act, or practice. The assurance shall not constitute an admission of guilt nor be introduced in any other proceeding. The assurance may include a stipulation for any or all of the following:

- ? The voluntary payment by the person for the costs of investigation.
- ? An amount to be held in escrow pending the outcome of an action.

- ? An amount for restitution to an aggrieved person.

VI. CONSEQUENCES OF MCNEIL-PPC, INC.'S VIOLATIONS

After MCNEIL-PPC has been provided with an opportunity to confer, and unless an Assurance of Discontinuance is accepted, or it is determined that there is no cause for action, the Attorney General may file a lawsuit against MCNEIL-PPC in Circuit Court as provide in section 5(1) of the Michigan Consumer Protection Act. A lawsuit under this act may result in the issuance of an Injunction, the imposition of a civil penalty of up to \$25,000.00 for persistent and knowing violations of the Act, and other relief ordered by the court.

The Attorney General may also bring a class action on behalf of persons residing in or injured in this state as provided in section 10 of the Act.

If MCNEIL-PPC decides to exercise its opportunity to confer before the lawsuit is filed, it must contact the undersigned Assistant Attorney General within ten (10) days after receiving this Notice to avoid the institution of legal action in Circuit Court.

JENNIFER M. GRANHOLM
Attorney General

Tracy A. Sonneborn (P41416)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
Phone: 517 335-0855
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Dated: September 13, 2000