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[redacted]

of
Act
the
Freedom of Information Act

October 9, 1985

VIA FEDERAL EXPRESS

Victor Cohen, Esq.
Premerger Office, Room 308
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, DC 20580

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PREMERGER NOTIFICATION OFFICE

Re: Informal Interpretation of Rule 801.11

Dear Mr. Cohen:

I am writing this letter to confirm our conversation of Wednesday, October 9, with regard to the application of Rule 801.11 to the determination of annual net sales of my client, a party to a proposed merger transaction (the "Company"). As I explained, we are attempting to determine whether the pre-filing requirements apply to the proposed transaction. The Company's most recent report to the Securities and Exchange Commission on Form 10-K includes audited financial statements for the year ending December 30, 1984. Those financial statements indicate that the client has both total assets and total revenues less that $10,000,000.

The Company is a nationwide franchisor of convenience food stores. One of the components of revenue indicated on the audited income statement is "income (loss) from temporary operation of stores," in an amount of [redacted] The notes to the consolidated financial statements indicate that this amount is the income or loss from stores acquired from former franchisees, and subsequently temporarily operated by the Company and then sold or liquidated. The notes include a summary of the operations of Company-operated stores, which indicates that the sales of those stores was slightly in excess of $7,000,000.

C. [illegible] 10-10-85

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I inquired whether the Company's income statement should be adjusted to include the total sales of these Company-operated stores rather than their income in the determination of the Company's total annual net sales. I explained that the Company consistently used this method of accounting for many years, and that it was in effect prior to the origin of the pending transaction. I also pointed out that the income statements reflecting this accounting decision had consistently met the company's auditors' approval.

You indicated, based on the foregoing facts as I described them to you, that the Commission would use the audited income statements and would not require any re-computation to reflect the addition of revenues rather than income of the Company-owned stores. On that basis, as indicated above, the company does not meet the "size of person" test, and no premerger filing is necessary.

If this summary of our conversation is not accurate, kindly contact me at your earliest convenience. Otherwise we will advise our client that it may act on the foregoing interpretation. Thank you for your cooperation.

Very truly yours,

[redacted]

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