

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
FLORIDA REAL ESTATE COMMISSION

IN RE: PETITION FOR DECLARATORY  
STATEMENT BY ROUTES R US, LLC.

FINAL ORDER GRANTING PETITION FOR  
DECLARATORY STATEMENT

**DS 2023-031**

Routes R Us, LLC. ("Petitioner") filed a Petition for Declaratory Statement ("Petition"), assigned number DS 2023-031, on July 5, 2023. Notice of receipt of the Petition was published in the Florida Administrative Register on July 11, 2023, Vol. 49, No. 133. The Commission considered the Petition, attached hereto and incorporated fully herein as Attachment A, at its meeting in Orlando, Florida on August 23, 2023. The Petitioner WAS present and WAS represented by counsel.

By its Petition, Routes R Us seeks the Commission's determination that the sale of "Routes" are not "business opportunities" as defined by section 559.801(1), F.S., and thus, the brokering of Routes is not an activity covered by Chapter 475, F.S., and that Petitioner, by engaging in such activities, is not acting as a "real estate broker" under Florida law, and is therefore not required to be licensed as such.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The facts considered by the Commission are as alleged in the Petition, a copy of which is attached hereto as Attachment A and which is incorporated by reference herein. The facts are accepted without any further information or investigation by the Commission.
2. No Petitions for Intervention or any comments were filed on the Petition.
3. Petitioner, Routes R Us, LLC, is a North Carolina limited liability company.
4. Petitioner is engaged in the business of assisting the owners of "Routes" with

marketing such routes for sale, including facilitating sales between buyers and sellers of routes.

5. As described and averred in the Petition, a "Route" is a direct store delivery distributorship contractual agreement. The owner of a "Route" has obtained the contractual right to distribute a specific company's product within certain geographic area, subject to the terms and conditions specified in the contract, which is between the company and the owner.

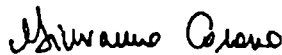
6. The Commission finds, based on the specific representations and averments of the Petition, that as described, "Routes" are not "business opportunities" as defined in section 559.801(1), F.S.

7. Because a route is not a business opportunity, the business of facilitating the purchases and sales of routes is not an activity which is included within the definition of a "broker" in section 475.01(1)(a), F.S.

8. Therefore, as the activity is not within the statutory definition of the activities of a chapter 475, F.S. "broker," Petitioner is not required to hold a Florida Real Estate Broker's license in order to engage in such activity.

9. Accordingly, the Commission GRANTS the Petition and STATES that that the business activity of facilitating the purchase and sale of routes is not within the statutory definition of the activities of a Florida Real Estate Broker, and Petitioner is not required to be licensed as real estate broker in Florida in order to engage in such activity in this state.

**DONE AND ORDERED** this 31<sup>st</sup> day of August, 2023.



\_\_\_\_\_  
For the Florida Real Estate Commission  
By Giovanna Corona  
Executive Director

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR WITH THE COURT OF APPEAL, FIRST DISTRICT. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

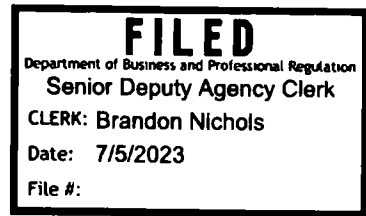
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Routes R Us, LLC**, 5724 Indian Wood Drive, Matthews, North Carolina 26104 and c/o **E. Dylan Rivers, Esq.**, Ausley & McMullen, P.O. Box 391, Tallahassee FL 32302; interoffice mail to **Division of Real Estate**, 400 W. Robinson Street, Suite N 801, Orlando, Florida 32801-1757; and by Electronic Mail to **Lawrence Harris**, Senior Assistant Attorney General, [Lawrence Harris @myfloridalegal.com](mailto:Lawrence.Harris@myfloridalegal.com) and [Cassandra.Lullove @myfloridalegal.com](mailto:Cassandra.Lullove@myfloridalegal.com) all on this 15<sup>th</sup> day of September, 2023.

*Brandon M. Nichols*

Deputy Agency Clerk

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**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF REAL ESTATE – FLORIDA REAL ESTATE COMMISSION**

**IN RE: PETITION BY ROUTES R US, LLC  
FOR A DECLARATORY STATEMENT**

**DS 2023-031**

**PETITION FOR DECLARATORY STATEMENT**

Petitioner, Routes R Us, LLC, a North Carolina limited liability company (“Petitioner”), by and through its undersigned counsel, and pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code, hereby petitions the State of Florida, Department of Business and Professional Regulation (“DBPR” or the “Department”), Division of Real Estate, Florida Real Estate Commission (“FREC” or the “Commission”) for a declaratory statement, and states as follows:

**Introduction**

1. Petitioner seeks a declaratory statement that it is not acting as a “broker” as that term is defined in Section 475.01(1)(a), Florida Statutes, and thus is not required to obtain a broker’s license to conduct its business in the State of Florida.

2. Petitioner is substantially affected by the Florida Statutes and administrative rules governing “brokers” in the State of Florida in that if Petitioner is deemed to be acting as a “broker” under Florida law, it will be subject to the licensure and regulatory requirements imposed on brokers, including, among other things, examination, requirements for a physical office location, insurance, continuing education, and the costs associated with all of this.

3. The Petitioner is Routes R Us, LLC, the address for which is 5724 Indian Wood Drive, Matthews, North Carolina. Robert Akelman is the principal and primary contact for Petitioner.

4. For purposes of this Petition, the address of Petitioner and Mr. Akelman is that of the undersigned counsel.

#### **What is a Route?**

5. The routes involved in Petitioner's business are direct store delivery ("DSD") distributorships/routes.

6. DSD distributorships are controlled by companies needing to distribute product, such as Snyder's – Lance, Flowers Foods, and others. These companies need their products distributed to stores where the products are sold to consumers.

7. These companies have approved distributors that are given the rights to distribute product offerings in certain areas subject to various terms and conditions. This is a contractual arrangement (not employment) between the distribution company and the approved distributor.<sup>1</sup>

8. Thus, the approved distributor that "owns" a route has a contract allowing it to distribute products in a specified area, or to specified customers, but it does not actually own anything beyond that.

9. A route does not involve any tangible assets, routes cannot be used as collateral for a loan, and the Small Business Administration ("SBA") does not recognize routes as a "business" for SBA loans.

10. Relatedly, the sale of a route does not involve the sale, transfer, or other conveyance of any title, ownership or interest in a business, real property, personal property, or other assets of any kind. For example, any trucks, equipment, or other property must be separately secured by an approved distributor.

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<sup>1</sup> The distribution companies set the terms and conditions, which are not uniform. Petitioner is not involved in this.

11. A route is also not a franchise, and there are no franchise fees or franchise rights involved in distribution routes. The distribution company retains the right to adjust the territory and customer lists in each route.

12. In short, to “own” a route is to have the contractual right to distribute certain products in a specified area and/or to specified customers.

### **Petitioner’s Business**

13. Petitioner assists “owners” of routes with marketing routes for sale, and helps bring together buyers and sellers for the purchase and sale of routes.

14. Petitioner maintains a significant web-based presence, and works with buyers and sellers of routes primarily by phone, email and/or video conference. A physical office is not needed, and buyers and sellers of routes may be located anywhere.

15. In addition to marketing routes, Petitioner verifies the routes being marketed for sale, and the annual sales revenues associated with the routes. Petitioner also helps in vetting potential buyers of routes.

16. Petitioner does not provide any financing for the purchase of routes, does not act as an escrow agent, and is not involved in negotiating terms and conditions with the distribution companies. Petitioner’s involvement is limited to the “owner” of a route looking to sell, and prospective buyers looking to purchase.

17. There is no transfer of any sort of title, no schedule of assets or liabilities, no stock certificates or other interests in a business, no inventory, and no franchise fees. There is only the “ownership” of the route, which again, is the contractual right to distribute certain products to specified customers and/or in specified areas.

### **Controversy as to the Applicability of Brokerage Laws**

18. On or about March 18, 2021, a competitor of Petitioner filed a complaint with the Department alleging that Petitioner was required to be licensed by the Commission to conduct business in Florida.<sup>2</sup> The matter was assigned DBPR Case No. 2021-012533.

19. A Notice to Cease and Desist was issued stating that the Department had probable cause to believe that Petitioner's principal, Mr. Akelman, was practicing as a broker without a license based on Petitioner advertising a route in Florida for sale. (A copy of the Notice to Cease and Desist is attached hereto as Exhibit A.)<sup>3</sup>

20. Petitioner (and Mr. Akelman) abided by the Notice to Cease and Desist, and stopped marketing routes in Florida. Although Petitioner questioned whether a broker's license was indeed required to market routes in Florida, Petitioner acted in accordance with the Notice to Cease and Desist.

21. Some time later, Petitioner (through its principal, Mr. Akelman) was sent a letter dated January 11, 2022, stating that the Department had dismissed the complaint in Case No. 2021-012533 because the facts and circumstances did not warrant the filing of administrative action. (A copy of this letter is attached hereto as Exhibit B.) Beyond this, no explanation for the dismissal was given.

22. Although the complaint in DBPR Case No. 2021-012533 was dismissed, it is unclear whether a determination has been made that Petitioner is not acting as a broker and thus is not required to be licensed. Petitioner now seeks such a determination.

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<sup>2</sup> The Complaint does not allege that Petitioner has engaged in any sort of wrongful conduct, caused harm to any consumer, or done anything other than advertise a route in Florida for sale, which the complainant argues requires a license. The Complainant simply does not want Petitioner to be able to compete in Florida.

<sup>3</sup> The Notice to Cease and Desist indicates that it was issued on March 3, 2021, but cites to activities alleged occurring on March 18, 2021. Though unclear, it seems there must be a typo or incorrect date in the notice.

### Legal Analysis

23. Florida law defines a “broker” as:

a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of **business enterprises or business opportunities or any real property or any interest in or concerning the same**, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting **business enterprises or business opportunities or real property of others or interests therein**, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of **business enterprises or business opportunities or the real property of another, or leases, or interest therein**, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists.

Section 475.01(1)(a), Florida Statutes (emphasis added)

24. In this context, Florida law defines “real property” or “real estate” as “any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right[.]” § 475.01(1)(i), Fla. Stat.

25. As explained above, DSD distributorships – or “routes” – do not involve any interest in land or in a business enterprise. There is no land or other real property involved, and a route is not a company or business enterprise. The sale of routes does not involve the transfer of any sort of title, shares, certificates or interests in any real estate or business entity of any kind.



Routes may be bought and sold by businesses (or individuals), but the routes themselves are not business enterprises. Thus, Petitioner is not acting as a real estate broker or business broker.

26. The term “business opportunities” is not defined in Chapter 475, Florida Statutes. However, Part VIII of Chapter 559, Florida Statutes, concerning the Sale or Lease of Business Opportunities includes a definition.

27. Section 559.801(1), Florida Statutes defines a business opportunity as “the sale or lease of any **products, equipment, supplies, or services** which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money which exceeds \$500 to the seller, and in which the seller represents...” The definition has additional provisions that are not pertinent for present purposes.

28. Routes are not “products, equipment, supplies, or services,” thus the sale of routes does not constitute the sale of business opportunities. Routes are the right to distribute products in a specified area or to specified customers, but they are not the actual products themselves.

29. In sum, Petitioner’s business does not involve “business enterprises or business opportunities or any real property or any interest in or concerning the same,” thus Petitioner is not acting as a “broker” under Florida law.<sup>4</sup>


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<sup>4</sup> Notably, no state has ruled that Petitioner is acting as a broker and must be licensed. One state that has directly addressed and decided the issue is California, where the definition of “broker” is similar to the definition in Florida law. Attached hereto as Exhibit C is a copy of a letter received from the State of California, and a copy of the California statute cited in the letter, which defines “broker.”

WHEREFORE, Petitioner, Routes R Us, LLC respectfully requests a declaratory statement that Petitioner is not required to obtain a broker's license to conduct business in the State of Florida.

Respectfully submitted this 3rd day of July 2023.



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**E. DYLAN RIVERS**  
Florida Bar #0669555  
Ausley & McMullen  
Post Office Box 391 (32302)  
123 South Calhoun Street  
Tallahassee, Florida 32301  
(850) 224-9115 - telephone  
(850) 222-7560 - facsimile  
E-mail: [drivers@ausley.com](mailto:drivers@ausley.com)  
Secondary E-Mail: [fsnavelly@ausley.com](mailto:fsnavelly@ausley.com)

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of July 2023, the foregoing has been sent by Federal Express to Department of Business and Professional Regulation, Division of Real Estate, 400 W Robinson Street N801, Orlando, Florida 32801 and a copy sent by U.S. Mail to:

Katy, McGinnis, Director  
Division of Real Estate  
400 West Robinson Street, N801  
Orlando, Florida 32801



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ATTORNEY

# **EXHIBIT A**

Julie I. Brown Secretary

Ron DeSantis Governor

## NOTICE TO CEASE AND DESIST

Section 455.228(1), Florida Statutes

To: Rob Akelman  
5724 Indian Wood Dr  
Matthews, NC

DBPR Case No 2021-012533

The Department of Business and Professional Regulation ("Department") notifies you that it has probable cause to believe that you may be practicing as a(n) **Real Estate Sales Associate/Broker** without the professional license or certification required by Florida law, specifically **Chapter 475**, Florida Statutes. Probable cause is based on the following facts:

On or about March 18, 2021 in St. Augustine, **St. Johns County, Florida**, you:

**Advertised the sale of a business opportunity for a Bimbo Bakery Route in St. Augustine, FL through his company RoutesRus, LLC based out of North Carolina. The above described service requires you to be licensed as a real estate sales associate or broker.**

Our records show that you are not currently licensed or certified by the Department as a(n) **Real Estate Sales Associate** and Florida law, **Chapter 475**, requires you to have a license or certification to practice as a(n) **Real Estate Sales Associate/Broker**. If the above facts are true, they establish probable cause for the Department to believe you are violating Florida law by practicing a regulated profession without the required license or certification.

This Notice to Cease and Desist is not final agency action by the Department. If you have any questions, please call the Investigator/Inspector at the number listed below. For information on the law, go to [www.leg.state.fl.us/statutes](http://www.leg.state.fl.us/statutes). If you are engaged in the practice of unlicensed activity and do not stop your unlicensed practice, the Department can enforce this Notice to Cease and Desist in circuit court by injunction or writ of mandamus.

The Department is giving you this Notice to cease the practice of **Unlicensed Real Estate Activity** without a license or certification so you can follow the law by applying and qualifying for a license or certification. Information about licensure may be found online at [www.myflorida.com/dbpr](http://www.myflorida.com/dbpr). If the Department finds in the future that you have not ceased the unlicensed practice of **Unlicensed Real Estate Activity**, the Department has the authority to issue a citation against you or bring an administrative action and pursue penalties up to \$5,000.00 for each incident of unlicensed activity. Please govern your future behavior accordingly.

ISSUED This: 3rd day of March 2021

Michael Tanner  
By: Investigator  
Telephone: 407-488-0981  
(Field Office)

# **EXHIBIT B**



Office of the General Counsel  
Al Cheneler, Chief Attorney  
Division of Real Estate  
2801 Blair Stone Road  
Tallahassee, FL 32389-2202  
Phone: 850.717.1193 - Fax: 850.817.4412

Melanie S. Griffin, Secretary

Ron DeSantis, Governor

January 11, 2022

Ron Akelman  
5724 Indian Wood Dr.  
Matthews, NC 28104

Re: DBPR v. Rob Akelman  
DBPR Case No. 2021-012533

Dear Rob Akelman:

This is to advise you that the Department dismissed the complaint against you concerning your alleged real estate brokerage activities. The designee of the Secretary of the Department of Business and Professional Regulation determined that the facts and circumstances did not warrant the filing of a formal administrative action against you.

Sincerely,

*/s/ Al Cheneler*

Al Cheneler, B.C.S.\*  
Chief Attorney, Division of Real Estate  
Office of the General Counsel  
Department of Business and  
Professional Regulation  
2801 Blair Stone Road  
Tallahassee, FL 32389-2202

\*Board Certified Specialist Real Estate

# **EXHIBIT C**

**DEPARTMENT OF REAL ESTATE**

2550 MARIPOSA MALL, SUITE 3070  
FRESNO, CA 93721-2273  
(559) 445-5009



June 23, 2022

ROUTES R US LLC  
ATTN: ROBERT AKELMAN  
5724 INDIAN WOOD DR  
MATTHEWS, NC 28104

RE: DRE #6-21-0322-001

Dear Routes R Us LLC:

As you may know, your file in the above matter was previously forwarded to our Sacramento office for Legal review.

One of our Staff Attorney's has determined that DSD routes or distributorships like Routes R Us LLC, do not qualify as a business opportunity and therefore, do not require a license under Business & Professions Code 10131. As a result of this finding, this case is being closed due to jurisdictional purposes with no further action taken.

I would like to thank you for your patience, cooperation, and assistance. Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Araceli Amezola", with a long, sweeping flourish extending to the right.

Araceli Amezola  
Special Investigator  
Fresno Enforcement Office

AA



West's Annotated California Codes

Business and Professions Code (Refs & Annos)

Division 4. Real Estate (Refs & Annos)

Part 1. Licensing of Persons (Refs & Annos)

Chapter 3. Real Estate Regulations (Refs & Annos)

Article 1. Scope of Regulation (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 10131

§ 10131. Real estate broker

Effective: January 1, 2019

Currentness

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business opportunity.
- (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase, or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.
- (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.
- (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.
- (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

**Credits**

(Added by Stats.1943, c. 127, p. 835, § 1. Amended by Stats.1955, c. 1678, p. 3013, § 1; Stats.1959, c. 2116, p. 4933, § 3;

**§ 10131. Real estate broker, CA BUS & PROF § 10131**

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Stats.1959, c. 2117, p. 4939, § 4; Stats.1960, 1st Ex.Sess., c. 45, p. 388, § 1; Stats.1961, c. 886, p. 2324, § 4, eff. June 28, 1961; Stats.1965, c. 172, p. 1134, § 5, operative Jan. 2, 1966; Stats.1984, c. 177, § 1; Stats.2018, c. 285 (A.B.2884), § 27, eff. Jan. 1, 2019.)

Notes of Decisions (83)

West's Ann. Cal. Bus. & Prof. Code § 10131, CA BUS & PROF § 10131  
Current with Ch. 1 of 2023-24 1st Ex.Sess, and urgency legislation through Ch. 11 of 2023 Reg.Sess. Some statute sections may be more current, see credits for details.

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**Please acknowledge receipt of petition by  
emailing a stamped copy to:**

**drivers@ausley.com**  
**jmcvaney@ausley.com**

**Thank you.**

E. DYLAN RIVERS  
AUSLEY & McMULLEN LAW FIRM  
123 S. CALHOUN ST

TALAHASSEE, FL 32301  
UNITED STATES US

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CAD: 1025564NET4610

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DEPT. BUSINESS/PROFESS. REGULATIONS  
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N801

ORLANDO FL 32801

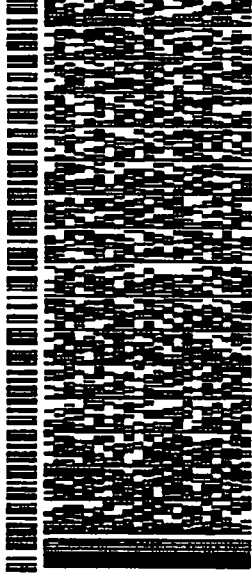
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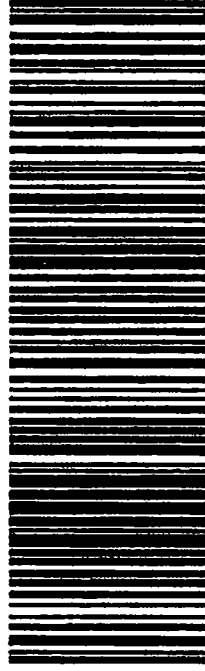
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