

# FEDERAL TRADE COMMISSION DECISIONS

## Findings, Opinions and Orders

IN THE MATTER OF

BENTON & BOWLES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2826. Complaint, July 6, 1976—Decision, July 6, 1976*

Consent order requiring a New York City advertising agency for General Foods Corporation, among other things to cease misrepresenting that a plant, or any part thereof, is suitable for human consumption in its raw state, where the plant is depicted growing in its natural, uncultivated environment. Further, respondent is prohibited from representing, through depictions, descriptions, etc., anything commonly recognized as food or a lawful food additive which tends to influence behavior creating imminent risk or physical harm to viewers.

### *Appearances*

For the Commission: *Steven D. Newburg-Rinn.*

For the respondent: *Bruce L. Bozeman, White Plains, N.Y. John Kovin, Clifford, Warnke, Glass, McIlwain & Finney, Washington, D.C.*

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Benton & Bowles, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "false advertisement" means false advertisement as defined by the Federal Trade Commission Act, as amended.

PAR. 2. Respondent Benton & Bowles, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 909 Third Ave., New York, New York.

PAR. 3. Respondent Benton & Bowles, Inc., is now, and for some time

last past has been, the advertising agency of General Foods Corporation, and now, and for some time last past, has prepared and placed for publication, and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of a variety of food products, including but not limited to "Post Grape Nuts," a ready-to-eat breakfast cereal (hereinafter referred to as Post Grape Nuts). Said product is a "food" as defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, respondent Benton & Bowles, Inc. causes various advertisements for Post Grape Nuts to be transported from its place of business to radio and TV stations located in various other States of the United States and in the District of Columbia. Respondent Benton & Bowles, Inc. maintains and at all times mentioned herein has maintained, a substantial course of trade in said advertising business in or affecting commerce. The volume of business in or affecting commerce has been and is substantial.

PAR. 5. In the course and conduct of its aforesaid business, respondent Benton & Bowles, Inc. has disseminated, and caused the dissemination of, certain advertisements concerning the said products by the United States mail and by various means in or affecting commerce, including but not limited to, by means of television broadcasts transmitted by television stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product, and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in or affecting commerce.

PAR. 6. Among the advertisements disseminated by means of television, but not all inclusive thereof, are the following:

Complaint



BENTON & BOWLES  
909 THIRD AVENUE  
NEW YORK, N.Y.  
(212) 758-6700

Client: GENERAL FOODS CORP.  
Product: GRAPE-NUTS  
Length: 30 SECONDS - (GFQN-1502)  
Title: "EUELL GIBBONS"



1. (SFX)



2. EUELL GIBBONS: I'm Euell Gibbons.



3. Many consider me an expert on natural foods...



4. Like cat-tails. Yes, they're edible!



5. I look for natural ingredients in my food.



6. That's why Grape Nuts is part of my breakfast.



7. This is the wholesome cereal... made from wheat and barley.



8. Those natural ingredients are baked into crunchy nuggets.



9. ...and fortified with eight essential vitamins.



10. It's naturally sweet and reminds me of wild nut-nuts.



11. EUELL GIBBONS: (VO) I call Grape-Nuts my back-to-nature cereal.



1

Complaint

1000 Broadway, New York, N.Y. 10018  
10/9/73

Client: GENERAL FOODS CORP.

Date: AS VIEWED  
SEPTEMBER 1973

Product: GRAPE-NUTS

Station:

Program:

Date: 1-9-20-73 vs/az

1:30 COMMERCIAL SPOT - 30 SEC  
("WILD CRANBERRIES - GOOD MILK")

PICTURE

SOUND

OPEN ON EUELL GIBBONS IN SNOW-  
COVERED, WOODED SETTING.

SUPER: "EUELL GIBBONS -  
AUTHOR OF STAMMING THE GOOD LIFE".

HE PICKS CRANBERRIES OFF OF A  
CRANBERRY BUSH.

TO TO CU OF EUELL'S HANDS HOLDING  
CRANBERRIES AND GRAPE-NUTS BOX.

REVEAL EUELL IN CABIN.

CU OF GRAPE-NUTS BEING POURED  
INTO BOWL.

SHOT OF HOT MILK BEING POURED  
OVER GRAPE-NUTS.

EUELL STIRS CEREAL AND THEN EATS  
IT.

TO TO COMPLETE GRAPE-NUTS BREAK-  
FAST.

SUPER: "BACK-TO-NATURE CEREAL".

EUELL GIBBONS:

I'm Euell Gibbons. I'm gathering  
part of my breakfast.

These are high bush cranberries.

Delicious with Grape-Nuts.

As an author of five books on  
natural foods, I can recommend  
Post Grape-Nuts.

This crunchy cereal is made from  
natural ingredients - wholesome  
wheat and barley.

And it's fortified with Vitamins.

Its naturally sweet taste reminds  
me of wild hickory nuts.

I call Grape-Nuts my back-to-  
nature cereal.

# TELEVISION

Post-Net Television, Inc. 602 Third Avenue, New York, N.Y. 10022 / 733-6200

Client: GENERAL FOODS CORP. Date: AS FILMED  
 Product: GRAPE-NUTS Station: APRIL 1974  
 Program: Draft: 1-4-24-74 sf/hz

:30 COMMERCIAL #GFGN-4022  
 ("GIBBON CACTUS REV. II")

PICTURE

OPEN WITH WIDE SHOT OF  
 EUELL GIBBONS IN THE DESERT.  
 SUPER:  
 "EUELL GIBBONS, AUTHOR OF  
 STALKING THE GOOD LIFE."

CONTINUE ACTION.

GIBBONS PICKS FRUIT OFF  
 OF A CACTUS. HE HOLDS  
 UP FRUIT.

TIGHT SHOT OF GIBBONS  
 HOLDING GRAPE-NUTS BOX.

POURING SHOT.

GIBBONS EATING GRAPE-NUTS  
 FROM BOWL.

PRODUCT SHOT.  
 SUPER:  
 "BACK-TO-NATURE CEREAL."

SOUND

EUELL GIBBONS:

I'm Euell Gibbons.

I'm gathering part of my breakfast

The fruit of this prickly pear  
 cactus will go well with Grape-Nut

Having spent years studying natura  
 foods, I can recommend Post Grape-  
 nuts.

It's a natural wheat and barley  
 cereal fortified with vitamins.  
 No artificial flavoring or pre-  
 servatives added.

Its naturally sweet taste reminds  
 me of wild hickory nuts.

I call Grape-Nuts my back-to-  
 nature cereal.

1st BROADCAST  
 ON CBS

SHOW: *That's Wild*  
 AIR DATE: 5/7/74  
 TIME: 10-10:30 AM

PAR. 7. The aforesaid advertisements have the tendency or capacity to influence children to eat plants or parts thereof which they find growing or in natural surroundings. Some plants or parts thereof are harmful if eaten. A substantial number of children do not have sufficient knowledge or experience to distinguish between those plants or parts thereof which are and those which are not harmful if eaten. Therefore the aforesaid advertisements have the tendency or capacity to influence children to engage in behavior which is harmful or involves the risk of harm, and were and are unfair or deceptive acts or practices.

PAR. 8. It is a commonly recognized safety principle that children should not eat any plants or parts thereof which they find growing or in natural surroundings, except under adult supervision. The aforesaid advertisements have the tendency or capacity to influence children, when not under adult supervision, to eat plants or parts thereof which they find growing or in natural surroundings, which behavior is inconsistent with said safety principle. Therefore, the aforesaid advertisements were and are unfair or deceptive acts or practices.

PAR. 9. The aforesaid advertisements have the tendency or capacity to represent, directly or by implication, to children that they can eat plants or parts thereof which they find growing or in natural surroundings without harm or the risk of harm. In truth and in fact, children cannot eat plants or parts thereof which they find growing or in natural surroundings without harm or the risk of harm. Therefore, the aforesaid advertisements were and are unfair and deceptive acts or practices and false advertisements.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Benton & Bowles, Inc., has been, and is now, in substantial competition, in or affecting commerce, with other corporations and individuals in the advertising business.

PAR. 11. The aforesaid unfair or deceptive acts or practices of respondent, as herein alleged, including the dissemination of false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or deceptive acts or practices in or affecting commerce, in violation of Sections 12 and 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau proposed to present to

the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered that matter and having determined that it has reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Benton & Bowles, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 909 Third Ave., New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

For the purposes of this order, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "plant" means any whole plant or any constituent part thereof.

3. The term "suitable for human consumption" shall not apply to the sole depicting or sole act of picking a plant or any constituent part thereof in its raw state.

#### I

*It is Ordered*, That respondent Benton & Bowles, Inc., a corporation, (hereinafter referred to as respondent), its successors and assigns, and its officers, agents, representatives and employees, directly or through



any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution in or affecting commerce of any product, forthwith cease and desist from, directly or indirectly:

A. Representing, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state in an advertisement containing a visual depiction of (1) the plant in its growing state or natural surroundings which depiction is not a clear portrayal of conditions of domestic cultivation for human consumption or (2) the consumption of a raw plant, described in the advertisement as wild.

B. Representing, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state in an advertisement containing a visual depiction of the plant in its growing state or natural surroundings where said plant is not the advertised product or an ingredient, or characterizing flavor, or source thereof, in the advertised product.

C. Representing, through depictions, descriptions, or otherwise, that any given thing or things, other than things that are commonly recognized as foods or lawful food additives, are suitable for human consumption as a food where it is reasonably foreseeable, through reasonable inquiry, that such representation has the tendency and capacity to influence members of the audience in reasonably good health to engage in behavior which creates an imminent risk of physical harm to those persons or to others.

D. *Provided, however,* that paragraph B shall not prohibit the representation, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state where the provisions of paragraphs A and C are met, and said plant:

(1) is nontoxic in its raw state; and

(2) does not have the tendency and capacity to be confused with a plant, which if consumed in its raw state, is toxic.

## II

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondent shall, within sixty (60) days

after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF  
RICHARD FOODS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2827. Complaint, July 6, 1976—Decision, July 6, 1976*

Consent order requiring a Melrose Park, Ill., manufacturer and seller of protein food supplements, among other things to cease misrepresenting the nutritional value and vitamin and mineral content of its soya powder baby formula; misrepresenting medical approval of its product and failing to disclose relevant facts concerning the treatment of symptoms listed in their advertisements without medical authorization by use of its formula. The order further provides for the immediate recall of all advertising materials and requires a warning on the label of its soya powder and all other protein supplements for infant use, that such products are not for infants under one year of age unless recommended by a physician.

*Appearances*

For the Commission: *Richard A. Palewicz.*

For the respondents: *James Van Vliet, Schiff, Hardin & White,*  
Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Richard Foods Corporation, a corporation, and Louis P. Richard, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Richard Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4520 James Place, Melrose Park, Illinois.

Respondent Louis P. Richard is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are engaged in the advertising, offering for sale, and sale of food supplements and other food products. The products are

manufactured by respondents or by others according to their respective specifications and are marketed in all fifty States by businesses designated as retail "food stores" that sell to consumers and "distributorships" who sell to other retail food stores. In the course and conduct of the aforesaid business, respondents are now and for some time past have been engaged in the publishing, dissemination and distribution of advertisements, promotional materials and labels concerning the uses, purposes, utility, characteristics and effects of protein supplements, which come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements, promotional literature and labels concerning their protein supplement, called "Fearn Natural Soya Powder" by the United States mail, and have distributed their protein supplements for the purpose of purchase and consumption by consumers, from their place of business in the State of Illinois to distributors in other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, and cause, and at all times mentioned herein have caused, the dissemination of advertisements by the United States mail, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing others to purchase said protein supplements, respondents have made, and are now making, directly or by implication, in advertisements which they cause to be placed in promotional brochures and labels, various statements and representations concerning said protein supplements. Typical and illustrative of such statements and representations are the following:

*Baby Formula* — Add 1 cup Soya Bean Powder to two quarts water. Simmer 10 minutes and strain. Add 2 tsp dark molasses after cooling. Shake occasionally during feeding. If feeding is too slow, enlarge holes in nipples with heated needle. This formula should be supplemented with baby vitamins (Vit A, C, and D) at about one month or foods containing these vitamins. Although the calcium content of the above formula is lower than for cow's milk, it is well assimilated. This formula may be supplemented by adding 1 heap tsp bone meal, calcium lactate, Fearn's Wheat Germ Powder, or brewer's yeast. The calcium lactate and bone meal may be used for all ages, but the brewer's yeast and Wheat Germ Powder may cause digestive troubles if added before two months.

*ENRICH BABY FOODS* by mixing Soya Bean Powder into fruits, vegetables, and cereals.

## ALLERGY AND DIGESTIVE PROBLEMS

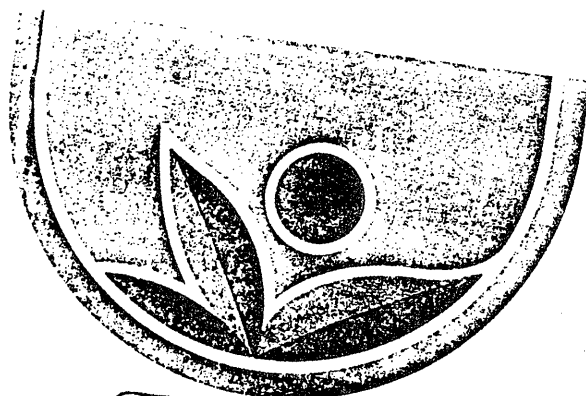
Food allergies are alarmingly high. One pediatrician reported that 38% of 1000 infants taken to him were allergic to various foods. The allergies in the order of their importance were cows milk, wheat, orange juice, vitamins, and eggs. Symptoms of food allergies include running noses, stomach ache, gas, and diarrhea. Because soya milk is much lower in allergenic properties than cows milk we recommend that a soya milk formula be used in preference to cows milk for infants. One formula for infants follows:

Add 1 cup Soya Bean Powder to two quarts water. Simmer 10 minutes and strain. Add 2 tsp dark molasses after cooling. Shake occasionally during feeding. If feeding is too slow, enlarge holes in nipples with heated needle. This formula should be supplemented with baby vitamins (Vitamin A, C, and D) at about one month of foods containing these vitamins. Although the calcium content of the above formula is lower than for cow's milk, it is well assimilated. This formula may be supplemented by adding 1 heaping tsp bone meal or calcium lactate.

Also you may enrich baby foods by mixing Soya Bean Powder into fruits, vegetables, and cereals.

In case of a severe attack of food allergies, an elimination period of about 4 days is recommended by many allergists. In this period very little is eaten and the food which is eaten must be low in allergenic properties. Some chronic sufferers of food allergies have advised that they are able to use soya powder in tomato juice during the elimination period. If a patient is able to tolerate a drink of 1 heaping tablespoon of soya powder in one eight ounce glass of tomato juice, this seems to help reduce the discomfortures of the elimination period considerably. This drink can be taken 3 times per day. Three glasses of this drink contain 260 calories, 22 grams of protein, more than the recommended amounts of Vitamin A and C and iodine and about half the recommended amounts of the B-complex Vitamins, phosphorus, and iron.

Charles E. Fearn, M.D. was recognized as the first to produce an edible soybean powder and his patented process is used in producing Dr. Fearn's Pure Soya Bean Powder used in other Dr. Fearn products. Dr. Fearn was recognized as the outstanding authority in the world and he was selected by President Wilson in 1917 to come to the United States and get the soybean started.



**Team**

**NATURAL  
SOYA  
POWDER**

CONTAINS ALL THE  
NATURAL OIL OF THE SOYBEAN  
USE IN BAKING AND FOR MAKING  
SOYA MILK

NET WT. 1 OZ.

Complaint

**NATURAL SOYA POWDER**

Produced by the expeller process without the use of solvents or other additives. May be eaten as is or added to many recipes as a nutrition booster.

**CALORIES**  
 8.2 per level tsp.      98 per ¼ cup  
 25. per heaping tsp.      390 per 100 grams (1 cup)

**LOW SODIUM DIETS**  
 NATURAL SOYA POWDER has less than 10 mg. sodium per 100 grams. (Typical analysis: 4 mg. sodium per 100 grams.)

**ALKALINE**  
 NATURAL SOYA POWDER is one of the most alkaline foods in common use (contains about 26 cc 1.0 N alkali per 100 grams). Because it is alkaline NATURAL SOYA POWDER may help counteract the acidity caused by meats and grains.

**APPROXIMATE ANALYSIS**

Protein (N x 6.25) .....	42. %
Dil .....	24. %
Carbohydrate	
Available .....	9. %
Not Available .....	12. %
Lecithin .....	2.4 %
Fibre .....	2.1 %
Mineral Ash .....	4.5 %
Moisture .....	4. %

100 grams of NATURAL SOYA POWDER (one cup) supply the following percentages of the adult minimum daily requirements:

Phosphorus .....	89%
Iron .....	105%
Iodine .....	over 100%
Calcium .....	27%
Thiamine .....	82%
Riboflavin .....	27%
Niacin .....	48%

MADE IN U.S.A.  
 Distributed by  
**FEARN SOYA FOODS**  
 Div. of Richard Foods Corp.  
 MELROSE PARK, ILL. 60160.  
 U.S.A.

PAR. 5. Through the use of said advertisements and labels and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

1. Fearn soya milk is an adequate nutritional replacement of human or cow's milk for infants under one year of age.
2. Fearn soya milk is adequate in protein content and availability to support normal cell and body growth in infants under one year of age.
3. Fearn soya milk with added molasses is nutritionally adequate in its caloric content to support daily energy requirements and to maintain an adequate rate of growth in infants under one year of age.
4. Fearn soya milk is nutritionally adequate in its vitamin content for normal growth and development of infants under one year of age.
5. Fearn soya milk is nutritionally adequate in minerals such as calcium and iodine for normal growth and development in infants under one year of age.
6. The calcium content of Fearn soya milk is well assimilated by infants under one year of age for normal growth and development of bones, teeth and muscle tissues.
7. Running noses, stomach ache, gas and diarrhea in infants under one year of age are symptoms that are due to food allergies.
8. Food allergies in infants under one year of age may be safely determined by anyone through the use of self-diagnosis and without the need of any professional consultation or advice from a pediatrician or physician.
9. Severe problems of food allergies in infants under one year of age can be alleviated by consumption of soya powder in tomato juice without the need of any medical advice or consultation.
10. Infants under one year of age are normally allergic to the vitamin content in natural foods.
11. Infants under one year of age could normally ingest enough of respondents' soya milk to satisfy daily energy requirements and maintain an adequate rate of growth and development.
12. Infants under one year of age could subsist on respondents' soya milk formula without other nutritional supplements for a significant period of time without suffering any risks to health or to normal growth and development.
13. Respondent's baby formula for the preparation of soya milk is approved by medical authorities for infants under one year of age.
14. The addition of "Fearn Soya Powder" to supplement the normal diet of infants in the United States from the first day such infants take



solid foods is desirable or recommended for sturdy growth and good health.

PAR. 6. In truth and in fact:

1. Fearn soya milk is not an adequate nutritional replacement for human or cow's milk for infants under one year of age.

2. Fearn soya milk is inadequate in protein content and availability to support normal cell and body growth in infants under one year of age. The protein content in soya milk could not be utilized effectively in the synthesis of tissue protein because the caloric content of soya milk is deficient.

3. Fearn soya milk with or without added molasses is nutritionally inadequate in its caloric content to support daily energy requirements and an adequate rate of growth in infants under one year of age.

4. Fearn soya milk is severely deficient in riboflavin and B-12 vitamins that are necessary for the normal growth and development of infants under one year of age.

5. Fearn soya milk is nutritionally inadequate in minerals such as calcium and iodine for normal growth and development in infants under one year of age. The severe deficiency in calcium requires necessary supplementation for adequate growth and development and cannot be left optional as implied by respondents.

6. The calcium content of Fearn soya milk is not well assimilated by infants under one year of age for normal growth and development of bones, teeth and muscular tissues. The absorption of calcium in infants would be seriously affected by the calcium-phosphorous ratio in the formula for Fearn soya powder and would seriously aggravate the already impaired bone development that would be caused by the low calcium content of the formula.

7. Running noses, stomach ache, gas and diarrhea in infants under one year of age are not symptoms that are confined to food allergies and may relate to more serious conditions in infants.

8. Food allergies in infants under one year of age cannot be safely determined by anyone through the use of self-diagnosis. The determination of food allergies in infants requires a medical diagnosis to insure that visible symptoms are the result of allergic conditions and to insure proper treatment for relief and to avoid aggravating the conditions that may be present.

9. Severe problems of food allergies in infants under one year of age cannot be alleviated by the consumption of soya powder in tomato juice or by any other treatment with soya powder. Problems of food allergies in infants are clinical in nature and should be properly diagnosed and treated by a pediatrician or physician.

10. Infants under one year of age are not normally allergic to the vitamin content in natural foods.

11. Infants under one year of age cannot normally ingest enough of respondents' dilute soya milk to satisfy daily energy requirements and maintain an adequate rate of growth and development.

12. Substantial risks to health and to normal growth and development would be caused by the use of respondents' soya milk formula without other nutritionally adequate foods for a significant period of time. Such a formula should not be given to infants at all except under highly qualified medical supervision.

13. Respondents' baby formula for the preparation of soya milk is not approved by medical authorities for infants under one year of age.

14. Without medical authorization, the addition of a concentrated protein product such as "Fearn Soya Powder" in unspecified amounts to the normal diet of infants under the age of one year, and particularly those who are dehydrated, can cause serious adverse effects, such as fever or serious illness.

PAR. 7. Furthermore, respondents deceptively failed to disclose in advertising directed toward the use of their baby formula for infants, that running noses, stomach ache, gas and diarrhea are not confined to food allergies and should be properly diagnosed and treated by a physician and that treatment of such symptoms by respondents' soya milk formula without medical authorization can cause serious adverse effects in infants that could affect normal growth and development.

PAR. 8. Therefore, the statements, representations, and failures to disclose material facts in said advertisements, promotional materials, and labels referred to in Paragraph Four were and are false, misleading, and deceptive in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act, and the statements, representations, and failure to disclose material facts as set forth in Paragraphs Five, Six, and Seven were, and are, false, misleading, and deceptive acts or practices.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of protein supplements.

PAR. 10. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and

representations were, and are, true and complete, into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief, and into taking unnecessary risks with respect to their health and well-being and that of others.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted and executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Richard Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4520 James Place, Melrose Park, Illinois.

Respondent Louis P. Richard is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For purposes of this order, the term "Fearn Natural Soya Powder" refers to the product of that name presently marketed by respondents and any other protein supplement for infant use.

For purposes of this order, a "protein supplement for infant use" is any protein food product that is marketed, advertised or recommended, directly or by implication, for infant use as a protein dietary supplement.

For purposes of this order, the term "soya milk" refers to the mixture that is prepared according to respondents' formula for infant use.

*It is ordered,* That respondents Richard Foods Corporation, a corporation, its successors and assigns, and its officers, and Louis P. Richard, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through its distributors or franchisees, if any, in connection with advertising and labeling, offering for sale, or sale and distribution of "Fearn Natural Soya Powder," or any other food product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' baby formula for soya milk or any other substantially similar formula for the preparation of soya milk, is an adequate nutritional replacement of human or cow's milk for the feeding of infants under one year of age.
2. Representing, directly or by implication, that soya milk is nutritionally adequate in protein content and availability to support normal cell and body growth in infants under one year of age.
3. Representing, directly or by implication, that soya milk is nutritionally adequate in its caloric content to satisfy daily energy requirements and maintain an adequate rate of growth in infants under one year of age.
4. Representing, directly or by implication, that soya milk is nutritionally adequate in its vitamin content to support normal growth and development in infants under one year of age.
5. Representing, directly or by implication, that soya milk is nutritionally adequate in mineral content, such as calcium and iodine, to support normal growth and development in infants under one year of age.
6. Representing, directly or by implication, that the calcium content

of soya milk is well assimilated in infants under one year of age for normal growth of bones, teeth and muscular tissue.

7. Representing, directly or by implication, that running noses, stomach ache, gas and diarrhea in infants under one year of age are symptoms that are confined to food allergies.

8. Representing, directly or by implication, that food allergies in infants under one year of age may be safely determined by anyone through self-diagnosis without the need for any medical consultation or advice.

9. Representing, directly or by implication, that attacks of food allergies in infants under one year of age may be adequately treated without medical authorization by adding soya powder to their diets.

10. Representing, directly or by implication that infants under one year of age are normally allergic to vitamins contained in natural foods.

11. Representing, directly or by implication, that infants under one year of age could normally ingest enough soya milk to satisfy daily energy requirements and maintain sufficient nutrition for adequate growth and development.

12. Representing, directly or by implication, that infants under one year of age may subsist on soya milk without other nutritional supplements for a significant period of time without suffering any nutritional risk to health, growth or development.

13. Representing, directly or by implication, that the soya milk formula is approved by medical authorities as being nutritionally adequate for consumption by infants under one year of age.

14. Representing, directly or by implication, that, in the absence of medical authorization "Fearn Soya Powder" should be added to the diets of infants under one year of age.

15. Failing to disclose the following warning clearly and conspicuously, *verbatim* on the label of "Fearn Natural Soya Powder" and on the label of any other protein supplement for infant use now or hereafter marketed by respondents.

NOTICE: Not for use in diets of  
infants under one year of age unless  
recommended by a physician.

For purposes of this order, the above Notice shall be deemed to be clear and conspicuous if the smallest letter of the Notice is no smaller than one-sixteenth of an inch and the Notice is in no way obscured by background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

16. Failing to disclose for a period of two years from the effective

date of this order, the following warning clearly and conspicuously (in print of a size and type no less prominent than the majority of the text of the document in which it is required to be contained), *verbatim*, in any advertising and promotional materials (excluding labels) for "Fearn Natural Soya Powder," or any other protein supplement for infant use now or hereafter marketed by respondents, excepting only those advertisements or promotional materials whose text is limited to the name and price of the product and a general description of the product of no more than one sentence or phrase:

NOTICE: Not for use in diets of infants  
under one year of age unless recommended  
by a physician.

*Provided, however,* that in any advertisement or promotional material (other than the kinds of limited advertising previously referred to in this paragraph of this order) consisting of no more than four sentences of text relating to "Fearn Natural Soya Powder," or any other protein supplement for infant use now or hereafter marketed by respondents, and not directed, explicitly or by implication, to infants or young children as users of the product, the notice may be limited to the following:

Use as directed by label.

A. Respondents, which have heretofore recalled their promotional leaflets advertising their soya milk infant formula, take any and all actions necessary and available to them to obtain the return to them of all copies, if any, of said leaflets remaining in the possession of their distributors and retail store customers of which respondents' officers have or obtain actual knowledge.

B. Respondents shall not be in violation of this order as the result of actions of their distributors or franchisees, if any, unless, respondents' officers obtain actual knowledge that an act, which would otherwise be a violation by respondents of the other provisions of this order, has been committed by such distributor or franchisee and respondents have failed within a reasonable period to take such action as respondents deem appropriate to cause such acts to be terminated; *provided,* that respondents shall be in violation of this order if respondents' officers obtain actual knowledge that an act which would otherwise be a violation by respondents of the other provisions of this order has been committed on more than one occasion (at least one of which occasions having occurred after respondents took appropriate action under the preceding clause) by such distributor or franchisee and respondents have failed within a reasonable period to take any and all

actions, including but not limited to termination of such distributor or franchisee, necessary and available to it to cause such acts to be terminated.

C. Respondents shall be in compliance with any provision of this order which is the subject of any of the provisions of a trade regulation rule hereafter adopted by the Commission regulating the advertising or labeling of protein supplements, such as "Fearn Natural Soya Powder" if respondents are in compliance with such provisions of such trade regulation rule.

D. Respondents forthwith cease and desist from furnishing distributors or others with any means, instrumentalities, directions or instructions whereby the public may be misled or deceived as to any of the matters or things prohibited by this order.

E. Respondents notify the Commission at least 30 days prior to any proposed change in the respondent corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

F. Respondents shall forthwith distribute (1) a copy of this order to each of their operating divisions; and (2) a notice to each of their distributors and franchisees, if any, notifying them of the provisions of paragraphs 1 through 16 of this order.

G. Respondents shall within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

88 F.T.C.

IN THE MATTER OF  
UNITED AUDIO PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2828. Complaint, July 12, 1976—Decision, July 12, 1976*

Consent order requiring a Mount Vernon, N. Y., manufacturer, importer and distributor of high fidelity audio components, among other things to cease maintaining resale prices and engaging in restrictive trade practices. Further, the order requires respondent to maintain records; reinstate dealers terminated for non-conformance with previously required pricing schedules and to take appropriate action against those distributors found to be in violation of the order.

*Appearances*

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg*.

For the respondent: *Rudolph Taplitz, Taplitz & Taplitz*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appears that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent United Audio Products, Inc. is a corporation organized under the laws of the State of New York, with its principal office located at 120 South Columbus Ave., Mount Vernon, New York.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and



other products to be shipped from the State in which they are manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the prices suggested or established by respondent; or (2) sells respondent's products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested prices, or who advertise respondent's products at prices below the prices

established by respondent or who supply respondent's products to other dealers; and

(g) Regularly furnishing dealers with price lists and supplements thereto containing established or suggested prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings, or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent United Audio Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 120 South Columbus Ave., Mount Vernon, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

*It is ordered,* That respondent United Audio Products, Inc., a corporation, its successors and assigns and respondent's employees, agents, representatives, including sales representatives or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *provided, however,* that subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or

understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the retail price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale or retail price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

In connection with the foregoing provisions under Part I of this

order, *it is further provided*, that after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to distribute and establish resale prices for its products under fair trade laws then in effect.

## II

*It is further ordered*, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since January 1, 1972 and to every new dealer for period of three (3) years.

2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.

3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents and sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.

4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violation.

5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from January 1, 1972 to the effective date of this order unless respondent can establish that the dealer terminated does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products, and forthwith reinstate any such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

## III

*It is further ordered,* That respondent:

1. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

## IV

*It is further ordered,* That in the event the Commission hereafter issues any order which is less restrictive than the provisions of Paragraphs I, II, or III, Sections 1 through 12, of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of United Audio Products, Inc., reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

## Complaint

IN THE MATTER OF  
NIKKO ELECTRIC CORPORATION OF AMERICA

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2829. Complaint, July 12, 1976—Decision, July 12, 1976*

Consent order requiring a Van Nuys, California, manufacturer, importer and distributor of high fidelity audio components, among other things to cease maintaining resale prices and engaging in restrictive trade practices. The order further requires respondent to maintain records; reinstate dealers terminated for non-conformance with previously required pricing schedules and to take appropriate action against those distributors found to be in violation of the provisions of the order.

*Appearances*

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg*.

For the respondent: *H. David Schmerin, Rotkin, Schmerin & MacIntyre*, Los Angeles, California.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appears that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Nikko Corporation of America is a corporation organized under the laws of the State of California, with its principal office located at 16270 Raymer St., Van Nuys, California.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are

manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the prices suggested or established by respondent; or (2) sells respondents' products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested prices, or who advertise respondent's products at prices below the prices



established by respondent or who supply respondent's products to other dealers; and

(g) Regularly furnishing dealers with pricelists and supplements thereto containing established or suggested prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings, or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Nikko Electric Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 16270 Raymer St., Van Nuys, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

*It is ordered,* That respondent Nikko Electric Corporation of America, a corporation, its successors and assigns and respondent's employees, agents, representatives, including sales representatives or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *provided, however,* that subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or

understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the retail price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale or retail price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

13. Guaranteeing, promising, through agreements or advertising or

by any other means the profit margins of its dealers, selective franchising, or limited distribution of its products.

In connection with the foregoing provisions under Part I of this order, *it is further provided*, that after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to distribute and establish resale prices for its products under fair trade laws then in effect.

## II

*It is further ordered*, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since January 1, 1972 and to every new dealer for period of three (3) years.
2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.
3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents and sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.
4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violation.
5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from January 1, 1972 to the effective date of this order unless respondent can establish that the dealer terminated does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products, and forthwith reinstate any

such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

## III

*It is further ordered*, That respondent:

1. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

## IV

*It is further ordered*, That in the event the Commission hereafter issues any order which is less restrictive than the provisions of paragraphs I, II, or III, sections 1 through 12, of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of Nikko Electric Corporation of America reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

Complaint

88 F.T.C.

IN THE MATTER OF

NORTHERLIN CO., INC. T/A VULCAN BASEMENT  
WATERPROOFING COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2830. Complaint, July 12, 1976—Decision, July 12, 1976*

Consent order requiring a Flushing, N.Y., franchisor of residential basement waterproofing products, among other things to cease misrepresenting the nature and effectiveness of its products or services; failing to respond to requests for service or maintenance; failing to maintain adequate records; failing to disclose relevant facts concerning its two forms of waterproofing services; misrepresenting guarantees; misrepresenting the size of its business; using misleading sales plans and furnishing means and instrumentalities of misrepresentation or deception.

*Appearances*For the Commission: *William F. Connolly.*For the respondent: *Mark Weinstein, Norwalk, Conn.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Northerlin Co., Inc., a corporation, doing business as Vulcan Basement Waterproofing Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 76-78 Parsons Boulevard, Flushing, New York. Respondent has established and operated a substantial number of wholly-owned corporate subsidiaries for the purpose of engaging in the business of selling residential basement waterproofing products and services. Respondent currently operates subsidiaries which are located in the States of Massachusetts, Connecticut, New York, Georgia, Maryland, Illinois, Ohio, Wisconsin, North Carolina, and Virginia. Respondent, in the operation of certain of these subsidiaries, does business as Vulcan Basement Waterproofing Company.

Respondent is engaged in the franchising of persons, firms and organizations with respect to the operation of offices located in several States which use the registered service mark "Vulcan" in their trade names and use respondent's "Vulcan Rights and Know-How" in their business operations. Each franchisee is authorized by means of a franchise agreement to engage in the advertising and selling of residential basement waterproofing products and services under the service mark "Vulcan" within a specified geographical territory. Under the terms of the agreement, each franchisee is obligated to pay to respondent a fixed royalty based on their gross dollar volume of basement waterproofing business.

PAR. 2. Respondent, through its own subsidiaries and through its franchisees, is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of residential basement waterproofing products and services to the public.

Respondent, through its own subsidiaries and through its franchisees, places into operation and implements a sales program whereby members of the general public, by means of advertisements placed in printed media of general circulation and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of salesmen and sales personnel, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign agreements (contracts) for the purchase of respondent's basement waterproofing products and services.

Respondent receives substantial income from the results of such agreements.

In the manner aforesaid, the respondent dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of its subsidiaries and franchisees, including the acts and practices hereinafter set forth. Moreover, respondent, directly or indirectly, profits and benefits by and through the acts and practices hereinafter set forth and accepts the pecuniary and other benefits flowing from the acts and practices of respondent's own subsidiaries and its franchisees.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes and for some time last past has caused its advertising and promotional material, and its said products, sales contracts, invoices, billing statements, commission statements, progress reports, checks, monies and other business papers and documents, to be shipped and transmitted to, from and between the several places of business operated by its subsidiaries and its franchisees located as aforesaid, and to prospective purchasers and purchasers thereof

located in various other States of the United States, other than the State of origination; and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products and services in and affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, for the purpose of obtaining leads or prospects for the sale of basement waterproofing products and services, respondent and its employees, salesmen, representatives, licensees and franchisees, cause prospective purchasers of its basement waterproofing products and services who have answered respondent's advertisements to be interviewed by salesmen at the place of residence of individual prospective purchasers. Said salesmen endeavor to sell respondent's basement waterproofing products and services and for the purpose of inducing the sale of said products and services, said salesmen make many statements and representations, directly or by implication, regarding such products and services, both orally and by means of brochures and other printed material displayed by salesmen to prospective purchasers, which are furnished by respondent to its subsidiaries and franchisees.

In conjunction therewith, respondent has made certain statements concerning the efficacy, value, worth and performance of the waterproofing products and services offered for sale to prospective purchasers and the guarantee offered by the respondent. Typical and illustrative, but not all inclusive of said statements and representations relating to the respondent's products and services are the following:

A. *Newspaper Advertisements*

Vulcan Waterproofs Basements Completely - Inexpensively.

24 - Hour Service

Written Guarantee

No Digging - No Damage to Shrubs, Walks, Driveways, etc.

B. *Radio Advertisements*

Call Famous Vulcan Basement Waterproofing Company now and find out how you can dry out your basement completely; inexpensively, without digging.

Say\* \* \* Do you have water in your basement every time it rains? If you do, you'll be mighty interested in a very special company that can eliminate that problem for you\* \* \*completely\* \* \*

Say - Do you have water in your basement every time it rains? If you do, you'll be interested in a very special company that can eliminate that problem for you \* \* \* permanently.



## Complaint

Vulcan's exclusive, patented process is applied from the outside \* \* \* which means no costly digging \* \* \* no damage to shrubs, walks or driveways.

*C. Statements In Brochures and Pamphlets*

Only with Vulcan do you receive the exclusive patented Vulcan Method.

The exclusive patented Vulcan method - guaranteed success without digging \* \* \* fast too.

Pressure pumping is a proven Vulcan method of applying a water resistant expandable inorganic mineral which forms a seal on exterior walls without excavation. This seals all types of foundation walls.

Vulcan's exclusive patented process can solve your basement water problems once and for all \* \* \* without costly excavations.

Let Vulcan keep your basement dry. Permanently. Inexpensively.

Vulcan is the only below grade basement waterproofing company that can guarantee you service 12 months of the year as you need it, when you need it.

Vulcan - the only nationwide waterproofing company specializing year-round in basement water problems.

The material (Vulcote) is flexible and, when applied according to the patented pressure Pumping Process, automatically seals walls against seepage \* \* \*

It (Vulcote) does not deteriorate with age or soil condition and does not evaporate or wash away.

The material (Vulcote) is flexible and not affected by weather and soil conditions \* \* \*

Vulcan Offers You Guaranteed Protection Against Water Damage To Walls - Floors - Foundations.

Vulcan Guarantee - We Guarantee:

That the Vulcan Method will waterproof your basement walls against all seepage.

Vulcan - Now Available to 709 Cities through 40 Fully - Staffed Branches and Offices in 101 Principal Cities.

Only With Vulcan Do You Get \* \* \* Termite Shielding.

*D. Oral Statements by Sales Representatives*

The Vulcan pressure pumping system is an exclusive patented process which seals the basement walls and floor and prevents water from leaking into the basement.

The Vulcan pressure pumping method is a patented process where Vulcote is pumped into the ground under pressure in a water solution which dries out and seals the entire basement and prevents water from coming in the walls and through cracks in the floor.

You won't need a pressure relief system. The pressure pumping job will eliminate your basement water problem completely.

The Vulcan pressure pumping method is guaranteed to eliminate your basement water problem.

The work is guaranteed. Once the pressure pumping job is done there won't be any more water.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations of salesmen and representatives, the respondent and its franchisees and licensees have represented, and are now representing, directly or by implication, that:

1. Respondent's method of basement waterproofing is an exclusive patented process.
2. Respondent's method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks.
3. Respondent's method of basement waterproofing will stop basement water damage completely and will keep basements dry permanently.
4. Respondent provides 24-hour repair and maintenance service to customers.
5. Respondent specializes in providing year-round basement waterproofing installation, repair and maintenance service to customers.
6. The waterproofing material (bentonite) used by respondent in its basement waterproofing services is not affected by soil conditions and the water table level.
7. Respondent's basement waterproofing services are unconditionally guaranteed in writing.
8. Respondent has branch offices with complete sales and service facilities in over 101 cities in the United States.
9. Respondent's method of basement waterproofing provides customers' homes with termite shielding and termite control treatment.
10. Respondent's basement waterproofing process, which is applied from the outside, waterproofs basements without digging and without causing damage to shrubs, walks or driveways.

PAR. 6. In truth and in fact:

1. Respondent's method of basement waterproofing is not an exclusive or unique process but has been and is utilized by other competing basement waterproofing companies.
2. Respondent's method of basement waterproofing will not seal all types of basement walls, floors and foundations against water leaks.
3. Respondent's method of basement waterproofing will not stop

basement water damage completely and will not keep basements dry permanently.

4. Respondent does not provide 24-hour repair and maintenance service to customers. Respondent has, in many cases, failed to complete basement waterproofing contracts and has failed to perform and provide the servicing obligations which it agreed to provide under its basement waterproofing contracts.

5. Respondent does not specialize in providing year-round basement waterproofing installation, repair and maintenance service to customers. Respondent has failed, in many cases, to provide year-round service to its customers and has, in many cases, conditioned its service and installation agreements on weather and temperature considerations.

6. The waterproofing material (bentonite) used by respondent in its basement waterproofing services is affected by soil conditions and the water table level. In those instances where the soil is not sufficiently porous or where the water table is not sufficiently low, the bentonite mixture will not act as an effective sealant.

7. Respondent's basement waterproofing services are not unconditionally guaranteed in writing.

8. Respondent does not have branch offices with complete sales and service facilities in over 101 cities in the United States.

9. Respondent's method of basement waterproofing does not provide customers' homes with termite shielding and termite control treatment.

10. Respondents' basement waterproofing process, which is applied from the outside, does not waterproof basements without digging and without causing damage to shrubs, walks or driveways. Respondent, in many cases, has done extensive digging along the interior and exterior basement walls of the homes of its customers; respondent, in many cases, has dug or drilled holes into walks and driveways adjacent to the basement foundations of the homes of its customers.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof, were and are, false, misleading, and deceptive.

PAR. 7. Through the use of its advertisements, brochures, pamphlets and oral representations, respondent and its employees, salesmen, representatives, licensees, and franchisees have represented, directly or by implication, that:

1. Respondent's method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks completely and permanently.

2. The waterproofing material (bentonite) used by the respondent is not affected by soil conditions and the water table level.

3. At the time respondent made the representations set forth in Sections (1) and (2) of this paragraph, it had a reasonable basis from which to conclude that its basement waterproofing method will seal all types of basement walls, floors and foundations against water leaks completely and permanently and that the waterproofing material (bentonite) used by the respondent is not affected by soil conditions and the water table level.

PAR. 8. In truth and in fact, during the time the representations set forth in Sections (1) and (2) of Paragraph Seven were made, respondent had no reasonable basis from which to conclude that its method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks completely and permanently and that the waterproofing material (bentonite) used by the respondent is not affected by soil conditions and the water table level.

Therefore, the statements and representations as set forth in Paragraphs Four and Seven, were and are, false, misleading and deceptive.

PAR. 9. Furthermore, the making of the representations that the respondent's method of basement waterproofing will seal all types of basement walls, floors and foundations against water leaks completely and permanently and that the waterproofing material (bentonite) used by the respondent is not affected by soil conditions and the water table level without a reasonable basis for making such representations, is in itself, an unfair act or practice in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. In the further course and conduct of its business and in the furtherance of its purpose of inducing prospective customers to execute contracts for basement waterproofing products and services, respondent and its employees, salesmen, representatives, licensees and franchisees have represented in their advertisements, brochures and in oral representations made by sales representatives, that the respondent's pressure pumping process sold to its customers at specified selling prices will waterproof its customers' basements permanently and completely with no need for additional services or products by respondent at additional cost to the customer. Respondent thereby has falsely and deceptively represented that the total selling price set forth in the contract constitutes the total outlay of money necessary to accomplish the waterproofing of customers' basements without disclosing that there is a specific likelihood that additional products and services by way of installation of a pressure relief floor system may be

subsequently required at substantial additional cost to the customer in order to completely waterproof the basements of such customers.

Therefore, respondent's statements, representations, acts and practices, and nondisclosure of material facts, as set forth herein, were and are, false, misleading, unfair or deceptive acts or practices.

PAR. 11. In the further course and conduct of its business and in the furtherance of its purpose of inducing prospective customers to execute contracts for its basement waterproofing products and services, respondent and its employees, salesmen, representatives, licensees and franchisees have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Seven, above, respondent or its representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 12. By and through the use of the aforesaid acts and practices, respondent places in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce with corporations, firms and individuals in the sale of basement waterproofing products and services of the same general kind and nature of those sold by respondent.

PAR. 14. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and the failure to disclose material facts has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and complete and into the purchase of respondent's products and services by reason of said erroneous and mistaken belief. Respondent's aforesaid acts and practices unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or

practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such an agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Northerlin Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 76-78 Parsons Boulevard, Flushing, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

##### I

*It is ordered*, That respondent Northerlin Co., Inc., a corporation, doing business as Vulcan Basement Waterproofing Company or any other trade name or names, its successors and assigns, and its officers,

(hereinafter sometimes referred to as "respondent"), and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, franchisee, licensee or other device, in connection with the advertising, offering for sale, sale and distribution of basement waterproofing and termite control products or services, or other products or services, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent employs an exclusive patented process.

2. Representing, directly or by implication, that such products or services will seal all types of basement walls, floors and foundations against water leakage.

3. Using the words, "permanently," "completely," "perpetually," "once and for all," or other words or phrases of similar import, to describe such products or services; or misrepresenting, in any manner, the nature and effectiveness of such products or services.

4. Misrepresenting the efficacy of the protection against termites and other insects afforded by such products or services; or misrepresenting, in any manner, the degree of protection from termites or other insects provided by such products or services.

5. Using the words "24-Hour," "year-round" or other words or phrases of similar import to describe the availability of respondent's installation, repair and maintenance service to customers.

6. (a) Failing to maintain a customer relations department to which purchasers of such products or services may refer complaints and/or requests for maintenance or replacement of faulty products or services promised under the terms of respondent's contract and guarantee; or failing to furnish to each customer at the time of purchase of such products or services the name, address and telephone number of such customer relations office to which requests for service and/or maintenance may be directed by such customers.

(b) Failing to respond to requests for service or maintenance within seven (7) days from the date of receipt thereof, by customers who previously purchased such products or services.

(c) Failing to maintain for a period of three (3) years, records of customers' service and maintenance requests and related documents in connection with the implementation of Paragraph 6(a) and (b) above.

7. Failing to disclose in writing on the face of every contract for the pressure pumping process, in bold print, on an easily detachable form which shall be executed by the customer and retained by the seller and orally, prior to the signing of any contract, and in ten point boldface

type in all advertisements, promotional materials and similar documents, the following notice:

VULCAN PROVIDES TWO KINDS OF WATERPROOFING SERVICES: CHANNELING WATER AWAY FROM THE BASEMENT AND PRESSURE PUMPING A BENTONITE MIXTURE AGAINST WALLS AND FOOTINGS. THE BENTONITE MATERIAL USED IN THE PRESSURE PUMPING PROCESS WILL NOT PREVENT LEAKS IN YOUR BASEMENT UNDER CERTAIN TYPES OF SOIL AND WATER TABLE CONDITIONS. IF YOU HAVE NOT HAD ENGINEERING TESTS CONDUCTED ON YOUR PROPERTY BY A QUALIFIED ENGINEER, YOU CANNOT BE SURE THE PROCESS YOU HAVE CONTRACTED FOR WILL WORK ON YOUR HOME.

7a. Failing to disclose in radio and other electronic media advertisements the following notice:

THE BENTONITE MATERIAL USED IN THE PRESSURE PUMPING PROCESS WILL NOT PREVENT LEAKS IN YOUR BASEMENT UNDER CERTAIN TYPES OF SOIL AND WATER TABLE CONDITIONS. IF YOU HAVE NOT HAD ENGINEERING TESTS CONDUCTED ON YOUR PROPERTY BY A QUALIFIED ENGINEER, YOU CANNOT BE SURE THIS PROCESS WILL WORK.

8. Making any representations, orally or in writing or in any other manner, relating to the efficacy, effectiveness or performance of such products or services unless, at the time such representations are made, respondent has a reasonable basis for such representations which shall consist of competent engineering or other similar objective material.

9. Failing to maintain accurate records which may be inspected and copied by Commission staff members upon reasonable notice:

(a) Which consist of documentation to support any and all claims made after the effective date of this order in advertising or sales promotion material concerning the efficacy and performance characteristics of any such products or services marketed by the respondent.

(b) Which provided the basis upon which respondent relied as of the time those claims were made; and

(c) Which shall be maintained by respondent for a period of three years from the date such advertising or sales promotion material was last disseminated.

10. Representing, directly or by implication, orally or in writing, that any of respondent's products or services are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondent promptly and fully performs all of its obligations and requirements, directly or impliedly represented under the terms of each said guarantee.



11. Representing, directly or by implication, that an office is maintained by respondent in any city or town other than that in which a fully staffed sales, service and installation office or place of business is, in fact, maintained, occupied and used by respondent; or misrepresenting in any manner the size of respondent's business.

12. Representing, directly or by implication, that respondent will apply such products or services to waterproof basements without digging, or without the necessity of having waterproofing work done inside the basement.

13. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made, directly or by implication, in order to obtain leads or prospects for the sale of, or induce purchases of goods or services.

14. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner, or by the acts and practices prohibited by this order.

15. Failing to maintain and produce for inspection and copying, for a period of three years, copies of all advertisements, brochures, sales contracts, salesmen's manuals and sales bulletins, and all other promotional materials utilized in the advertising, promotion and sale of such products or services.

16. Contracting for any sale of such products or services in the form of a sales contract or other agreement which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution of the contract or other agreement.

17. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

18. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and

easily detachable, and which shall contain in ten point boldface type the following information and statements.

NOTICE OF CANCELLATION

*(Enter Date of Transaction)*

*(Date)*

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO *(Name of Seller)*, AT *(Address of Seller's Place of Business)*, NOT LATER THAN MIDNIGHT OF *(Date)*

I HEREBY CANCEL THIS TRANSACTION.

*(Date)*

*(Buyer's Signature)*

19. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

20. Failing or refusing to honor any valid notice of cancellation by a buyer and within 3 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale.

II

1. *It is further ordered, That:*

(a) Respondent herein deliver, by registered mail, a copy of this decision and order to each of its present and future franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or to any other person who advertises, promotes, offers for sale, sells or distributes such products or services offered by respondent.

(b) Respondent herein provide each person so described in paragraph (a) above with a form returnable to the respondent clearly stating his intention to be bound by and to conform his business practices to the requirements of this order; retain said statement during the period said person is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondent herein inform each person so described in paragraph (a) above that the respondent will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondent that he will be bound by the provisions contained in this order.

(d) If such party as described in paragraph (a) above will not agree to so file the notice set forth in paragraph (b) above with the respondent and be bound by the provisions of the order, the respondent shall not use or engage or continue the use or engagement of, such party to promote, offer for sale, sell or distribute such products or services included in this order;

(e) Respondent herein inform the persons described in paragraph (a) above that the respondent is obligated by this order to discontinue dealing with or to terminate the use or engagement of persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondent herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person described in paragraph (a) above conform to the requirements of this order;

(g) Respondent herein discontinue dealing with or terminate the use or engagement of any person described in paragraph (a) above, as revealed by the aforesaid program of surveillance, who continues on his own any act or practice prohibited by this order.

2. *It is further ordered*, That respondent Northerlin Co., Inc., shall forthwith distribute a copy of this order to each of its operating divisions.

3. *It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

4. *It is further ordered*, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided*, that if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

5. *It is further ordered*, That the respondent herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Modifying Order

88 F.T.C.

IN THE MATTER OF  
WILLIAM R. CLARK

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 8761. Complaint, April 30, 1968—Modifying order, July 13, 1976*

Order modifying an earlier order dated August 6, 1969, 34 F.R. 15348, 76 F.T.C. 207, modified September 1, 1970, 35 F.R. 15807, 77 F.T.C. 1186, by deleting Paragraph 16 of the order because provisions of the newly promulgated *Trade Regulation Rule on the Preservation of Consumers' Claims and Defenses* supercedes it.

*Appearances*

For the Commission: *Margery Waxman Smith.*

For the respondent: *John W. Norwood, Washington, D.C.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

On June 17, 1976, respondent William R. Clark (Clark) by a paper entitled Motion to Modify Order Issued on August 6, 1969, and Modified on September 1, 1970, which will be treated as a petition to reopen this proceeding, has requested that Paragraph 16 be deleted from the order. The Bureau of Consumer Protection has filed an answer wherein it advises that it does not oppose Clark's request.

The Commission has determined that the request should be granted because the provisions of its newly promulgated Trade Regulation Rule on the Preservation of Consumers' Claims and Defenses have superseded Paragraph 16 of this order.

*It is ordered,* That the proceeding be, and it hereby is, reopened.

*It is further ordered,* That the order to cease and desist be, and it hereby is, modified by deleting Paragraph 16.

IN THE MATTER OF  
FORD MOTOR COMPANY

*Docket 9001. Order, July 13, 1976*

Denial of respondent's petition for reconsideration of portions of opinion and order issued April 13, 1976 [87 F.T.C. 756], granting summary decision on issues concerning message conveyed to consumers by advertisements challenged in this proceeding.

*Appearances*

For the Commission: *Wallace S. Snyder, Heidi P. Sanchez, and Ellis M. Ratner.*

For the respondent: *Wald, Harkrader & Ross, Washington, D.C. and David R. Larrouy, Dearborn, Mich.*

ORDER DENYING MOTION TO RECONSIDER

Ford Motor Company has petitioned the Commission to reconsider portions of its opinion and order entered April 13, 1976, granting summary decision on issues concerning the message conveyed to consumers by the advertisements challenged in this proceeding. In respondent's view, the Commission ignored defense evidence which it believes raised genuine issues of material fact and abused its expertise in determining the meaning of respondent's advertisements in the context of a summary decision. We have determined that respondent's motion should be denied.

In reviewing the evidence submitted by Ford, and for purposes of interpreting the meaning of these ads, the Commission is not obliged to ignore its own expertise simply because the questions concerning how an advertisement may be perceived by the public arise in the context of a summary decision. As respondent notes, the Commission may accept extrinsic evidence to supplement its expertise, but such evidence does not supplant our expertise. Consequently, in affirming the administrative law judge's evidence to supplement its expertise, but such evidence does not supplant ruling, the Commission, based on its own evaluation of the advertisements themselves, rejected respondent's extrinsic evidence. Because these ads, upon analysis, indisputably, in the judgment of the Commission, contain the representation alleged in the complaint, neither the Burke study nor the conflicting opinions of the experts based on the survey data provoke a genuine controversy necessitating resolution by further adjudication. Accordingly, the matter was remanded to the administrative law judge for hearings in the public interest on issues concerning whether or not respondent had a reasonable basis for its advertising claims.

The Commission has, therefore, determined that respondent's Motion for Reconsideration be, and it hereby is, denied.

Chairman Collier concurring for the reason set forth in attached statement.

CONCURRING STATEMENT BY CHAIRMAN COLLIER

Section 3.55 of the Commission's Rules of Practice provides that a petition for reconsideration must be confined to "new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission." Since Ford's petition does not meet this test, I concur in its denial.

IN THE MATTER OF

NEW ENGLAND TRACTOR TRAILER TRAINING OF  
MASSACHUSETTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 9026. Complaint, April 8, 1975—Decision, July 13, 1976*

Consent order requiring a Quincy, Mass., and Somers, Conn., truck driver training school, among other things, to cease misrepresenting employment opportunities, placement services, the training their personnel have as vocational counselors, and the behind-the-wheel road-driving instruction furnished as part of their course. Further, respondents are required to disclose pertinent information regarding their courses of instruction; furnish prospective consumers with a three-day cooling-off period; search their files for previous purchasers, make refunds in accordance with the provisions of the order, and submit notarized affidavits attesting to those actions; and to institute and maintain a surveillance program to insure compliance with the order.

*Appearances*

For the Commission: *Martin J. Dolan, Jr., Charles M. La Due, David W. DiNardi, and Raymond J. McNulty.*

For the respondents: *Mack M. Roberts, Chestnut Hill, Mass.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that New England Tractor Trailer Training of Massachusetts, Inc., New England Tractor Trailer Training of Connecticut, Inc., corporations, and Arlan Greenberg, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent New England Tractor Trailer Training of Massachusetts, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 542 East Squantum St., in the city of Quincy, Massachusetts.

Respondent New England Tractor Trailer Training of Connecticut, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal

office and place of business located at Main St., in the city of Somers, Connecticut.

Respondent Arlan Greenberg is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of respondent New England Tractor Trailer Training of Connecticut, Inc.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of training courses purporting to prepare graduates thereof for employment as truck drivers. Said courses, when pursued to completion, consist of a series of lessons presented during a period of in-residence training at places designated by respondents.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the training courses by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of general interstate circulation and by means of commercial announcement over television and radio transmitted across State lines, and by means of brochures, pamphlets and other promotional materials disseminated through the United States mail, for the purpose of obtaining leads or prospects for the sale of such training courses, and for the purpose of inducing the purchase of such training courses.

Respondents, from their principal places of business located in Massachusetts and Connecticut, utilize the services of salesmen and cause said salesmen to visit prospective purchasers located in various other States who respond to the respondents' advertisements and commercial announcements for the purpose of inducing the purchase of such training courses by such prospective purchasers.

Respondents transmit and receive, and cause to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of said training courses, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to and from the several places of business operated by the respondents located as aforesaid and to prospective purchasers and purchasers thereof, located in various other States of the United States, other than the State of origination. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said training courses in or



affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, for the purpose of obtaining leads or prospects for the sale of such training courses, and for the purpose of inducing the purchase of such training courses, respondents have made numerous statements and representations in newspaper advertisements, television and radio commercials, brochures and other printed materials regarding job opportunities, wages, the qualifications of respondents' students who complete respondents' training courses, the nature of the training provided in respondents' training courses, the placement assistance furnished to respondents' graduates in obtaining employment, and other matters. Certain of the statements and representations have been placed by respondents in the "Help Wanted" columns of newspaper advertisements.

In the further course and conduct of their business as aforesaid, respondents cause persons who respond to their newspaper advertisements and television and radio commercials to be visited by respondents' salesmen in the homes of such persons.

For the purpose of inducing the sale of respondents' training courses, such salesmen make to prospective purchasers many statements and representations, directly or by implication, regarding job opportunities, wages, the qualifications of respondents' students who complete respondents' training courses, the nature of the training provided in respondents' training courses, the placement assistance furnished to respondents' graduates in obtaining employment, and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets, and other printed material furnished to said salesmen by respondents, and other statements and representations are made orally by said salesmen.

Typical and illustrative, but not all inclusive, of said statements and representations relating to the hereinafter described truck driver training courses are the following:

A. Newspaper Advertisements:

EMPLOYMENT

EARN AS YOU LEARN

\$200 to \$300 WEEKLY

Join the exciting trucking industry. No experience needed. Call N.E. Tractor Training today to start you in a highpaying career. Placement Assistance. Train full or part time. Approved for Veterans. Call Burlington 864-0774

\* \* \* \* \*

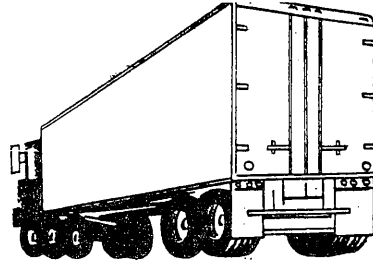
A FUTURE VIA TRUCKS Industry needs Class I Drivers. Let New England Tractor Trailer Training, Somers, Conn. train you for a secure future in the high paying trucking industry. Act Now. Full or part time training available.

Complaint

88 F.T.C.

Approved for Veterans benefits. Call anytime for Free Brochure. Springfield  
781-2501

\* \* \* \* \*



**Today's Tractor  
Trailer Drivers  
are Schooled,  
not Born!**

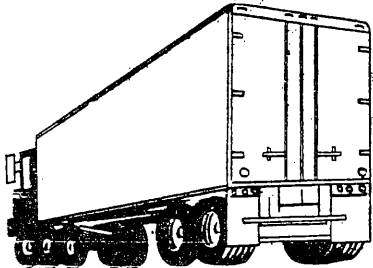
BECOME A TRACTOR-TRAILER DRIVER WITH  
THE AIDE OF NEW ENGLAND'S LARGEST AND  
OLDEST SCHOOL. SECURE YOUR CLASS 1  
LICENSE AND DOT CERTIFICATION. TODAY'S  
PROFESSIONAL DRIVERS EARN OVER \$12,000  
A YEAR AND ENJOY MANY FRINGE BENEFITS!

**APPROVED FOR VETERANS**

**Call Danielson -**

**774-0200**

New England Tractor Trailer Training  
Somers, Connecticut



( THE TURNPIKE BUYER,  
Danielson, Conn.  
March 14, 1973 )

Complaint

88 F.T.C.

EARN AS YOU LEARN EARN up to \$10,000 per year as a tractor trailer driver. Keep a job while you train part time. Let New England Tractor Trailer Training start you on a high paying career. Full time also available. VA approved. Call: 781-5112 AS SEEN ON TV

\* \* \* \* \*

TRUCKS! NEED DRIVERS.

UNION SCALE \$5.91 Per Hr.

New England Tractor Trailer Training of Somers, Conn. can train you for a high paying job in the trucking industry. Train Full or Part Time. Approved for veterans. Call anytime for free Brochures Spfld. 781-2501"

\* \* \* \* \*

#### B. Television Commercials:

HAVE YOU EVER WONDERED TO YOURSELF WHO DRIVES THOSE HUGE TRACTOR TRAILERS THAT ARE ROLLING ALONG OUR HIGHWAYS? THE ANSWER IS A VERY SPECIAL KIND OF MAN, A HIGH-SKILLED, WELL-TRAINED INDIVIDUAL WHO LIKES THE CHALLENGE AND FREEDOM OF THE TRUCKING BUSINESS, AND WHO ENJOYS ITS FINANCIAL REWARDS: MAYBE A MAN JUST LIKE YOU. THESE MEN WERE NOT BORN TRUCK DRIVERS, THEY HAD TO LEARN TO OPERATE THESE TRUCKS SAFELY AND SKILLFULLY, AND THE PLACE WHERE YOU CAN LEARN IS NEW ENGLAND TRACTOR TRAILER TRAINING SCHOOL. TO TAKE ADVANTAGE OF THIS OPPORTUNITY RIGHT NOW, CALL 323-2700, THAT'S 323-2700. NEW ENGLAND TRACTOR TRAILER TRAINING SCHOOL IS THE OLDEST AND LARGEST IN NEW ENGLAND AND HAS TWO CONVENIENT LOCATIONS. TRAINING IS DONE ON A PART TIME OR FULL TIME BASIS, AND NEW ENGLAND TRACTOR TRAILER TRAINING WILL ASSIST YOU IN FINDING A JOB UPON COMPLETION. \* \* \* APPROVED FOR VETERANS' BENEFITS. SO DON'T JUST WONDER ABOUT THE EXCITING TRUCKING BUSINESS: CALL 323-2700. THAT NUMBER IS 323-2700 OR WRITE NEW ENGLAND TRACTOR TRAILER TRAINING SCHOOL TODAY, IN CARE OF \_\_\_\_\_.

\* \* \* \* \*

WE SPECIALIZE IN TRAINING PEOPLE FOR THE EVER GROWING TRUCKING INDUSTRY. OUR INSTRUCTORS ARE PROFESSIONALS FROM CLASSROOM TEACHING TO INSTRUCTING OUR STUDENTS ON THE MANY RIGS AND TRANSMISSIONS THEY WOULD BE FACED WITH WHILE ON THE JOB. NEW ENGLAND TRACTOR TRAILER TRAINING SCHOOL, THE OLDEST AND LARGEST IN NEW ENGLAND HAS TWO CONVENIENT LOCATIONS. FOR INFORMATION CALL \_\_\_\_\_, THAT'S \_\_\_\_\_, THE COURSE TAKES ONLY FOUR WEEKS FULL TIME, OR STUDY WHILE YOU WORK, WITH OUR PERSONALIZED PART TIME INSTRUCTION. REMEMBER, NEW ENGLAND TRACTOR TRAILER TRAINING IS THE BEST EQUIPPED SCHOOL TO TEACH YOU WHAT YOU MUST KNOW. YOU LEARN UNDER ACTUAL DRIVING CONDITIONS ON OUR SPECIAL FIELDS AS WELL AS IN CITIES AND ON HIGHWAYS. CALL NOW FOR MORE INFORMATION. THE NUMBER IS \_\_\_\_\_, THAT'S \_\_\_\_\_. THIS COURSE IS APPROVED FOR VETERANS' BENEFITS. THERE'S EVEN A

PLACEMENT SERVICE. DON'T MISS THIS OPPORTUNITY\* \* \*CALL NOW.

C. Radio Commercials:

BROUGHT TO YOU BY THE NEW ENGLAND TRACTOR TRAILER TRAINING SCHOOL. FOR INFORMATION ON HOW YOU CAN EARN TWO TO THREE HUNDRED DOLLARS PER WEEK, CALL 323-2700 THAT'S 323-2700

D. Statements from Brochures:

THE ROAD TO A NEW CAREER, SUCCESS AND HIGHER EARNINGS\* \* \* NEW ENGLAND TRACTOR TRAILER TRAINING YOUR GATEWAY TO A SECURED FUTURE! Our counselor will look forward to meeting you and discussing your future in the trucking industry. Why do you want to establish yourself in the heavy trucking industry?\* \* \* If accepted, can you devote a number of hours to your training?\* \* \* After graduation would you prefer local employment, or if the conditions and locations were satisfactory, would you be willing to relocate?\* \* \* Can you accept employment immediately after completion of the training course?\* \* \* How many years do you intend to drive a truck before retiring?\* \* \* PLEASE ANSWER ALL QUESTIONS COMPLETELY. KEEP THIS QUALIFICATION CHART UNTIL OUR VOCATIONAL COUNSELOR ARRIVES IN YOUR CITY WITHIN 10 DAYS FOR A PERSONAL INTERVIEW\* \* \* PROFESSIONAL TRUCK DRIVING — A REAL MAN'S CAREER. EARN \$10,000 OR MORE a year as a tractor trailer driver\* \* \* ROAD DRIVING 16 to 20 hours of road driving, hauling unloaded and loaded boxes \* \* \* MORE TIME IF NEEDED.

E. Oral Statements by Sales Representatives:

One of our recent graduates is earning five-hundred dollars a week, driving cross-country.

One of our recent graduates cleared two-hundred sixty dollars his first week.

I don't want to talk to you unless you're seriously interested in the trucking industry.

Our placement service works hand-in-hand with trucking companies.

Our school takes in for training only the cream of the crop.

PAR. 5. By and through the use of the above statements and representations and others of similar import and meaning, but not expressly set out herein, respondents have represented, directly or by implication, that:

1. The corporate respondents operate, represent or are affiliated with, trucking companies.
2. Respondents offer employment to qualified applicants who will be trained as truck drivers.
3. Respondents have been requested by trucking companies to train drivers for jobs as truck drivers with such companies upon completion of said training.

4. Graduates of respondents' training courses will be qualified thereby for employment as truck drivers without further training or experience.

5. Respondents had a reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' training courses.

6. Respondents had a reasonable basis from which to conclude that persons who complete respondents' training courses earn such amounts as \$5.91 per hour, \$300 per week, or over \$12,000 per year and other stated amounts as truck drivers.

7. Respondents provide a placement service which will secure jobs as truck drivers for graduates of said courses who want to work in that capacity.

8. Graduates of respondents' training courses who want to work are assured jobs as truck drivers as a consequence of graduating from said courses.

9. Respondents' sales representatives are trained or qualified vocational counselors.

10. Respondents accept only qualified candidates for enrollment in said training courses.

11. Respondents' training courses provide a minimum of 16 to 20 hours of road-driving instruction.

PAR. 6. In truth and in fact:

1. The corporate respondents do not operate or represent, and are not affiliated with trucking companies.

2. Respondents do not offer employment to persons who will be trained as truck drivers. The real purpose of such advertisements is to obtain leads to prospective purchasers of respondents' training courses.

3. Respondents have not been requested by trucking companies to train persons for jobs as truck drivers with such companies upon completion of said training.

4. Graduates of respondents' training courses are not thereby qualified for employment as truck drivers without further training or experience.

5. Respondents had no reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' training courses.

6. Respondents had no reasonable basis from which to conclude that persons who complete respondents' training courses earn amounts such as \$5.91 per hour, \$300 per week, over \$12,000 per year and other stated amounts as truck drivers as a result of such training.

7. Respondents do not provide a placement service which will

secure jobs as truck drivers for graduates of said courses who want to work in that capacity.

8. Graduates of said courses who want to work are not assured jobs as truck drivers as a consequence of graduating from said courses.

9. Respondents' sales representatives are not trained or qualified vocational counselors. Respondents' representatives are commissioned salesmen who possess no special training, experience, title, qualifications or status.

10. Respondents accept all candidates for enrollment in said training courses. Respondents impose no qualifications on prospective enrollees and accept any person for enrollment in such courses who is willing to execute a contract and pay the required tuition for the training courses.

11. Respondents' training courses do not provide a minimum of 16 to 20 hours of road-driving instruction. To the contrary, students receive substantially less road-driving instruction.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were, and are, false, misleading, unfair, or deceptive acts or practices.

PAR. 7. Through the use of the aforesaid advertisements, television and radio commercials, brochures and otherwise, respondents have represented, directly or by implication, that there is or will be an urgent need or demand for respondents' graduates in positions for which respondents train them and that respondents' graduates earn such amounts as \$5.91 per hour, \$300 per week, over \$12,000 per year and other stated amounts as truck drivers. Respondents had at the time of said representations no reasonable basis adequate to support the representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 8. (a) In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers without disclosing in advertising or through their sales representatives: (1) the recent percentage of persons who have completed the training course who were able to obtain the employment for which they were trained; (2) the employers that hired any such persons; (3) the initial salary any such persons received; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respon-

dents have failed to disclose a material fact which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices. (b) Respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers without disclosing in advertising or through their sales representatives that:

1. Many employers of truck drivers prescribe a minimum age of twenty-one years of age for drivers;

2. Many employers of truck drivers give preferential consideration in hiring to driver-applicants who are twenty-five years of age or more because of insurance cost savings; and

3. Many employers of truck drivers give preferential consideration in hiring to driver-applicants with actual truck-driving experience.

Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 9. In the further course and conduct of their business and in the furtherance of their purpose of inducing prospective enrollees to execute enrollment contracts for their training course, respondents and their employees, salesmen, and representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices.

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Eight, respondents or their representatives have been able to induce prospective enrollees into executing enrollment contracts upon initial contact without affording the enrollee sufficient time to carefully consider the purchase of the training course and the consequences thereof.

PAR. 10. Respondents have been and are now failing to disclose material facts while using the aforesaid unfair, false, misleading or deceptive acts and practices, to induce persons to pay or to contract to pay over to them substantial sums of money to purchase or pay for courses of instruction whose value was virtually worthless to said persons for purposes of obtaining future employment in the jobs for which they were provided training. Respondents have received the said



sums and have failed to offer refunds and have failed to refund such sums to, or to rescind such contractual obligations of, substantial numbers of enrollees and participants in such training courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between respondents and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of training courses covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce a substantial number thereof to purchase respondents' training courses by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having issued its complaint on April

8, 1975, charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and respondents having been served with a copy of the complaint, together with a proposed form of order; and

Respondents and counsel for the Commission having submitted a joint motion to withdraw this matter from adjudication for consideration of settlement by the entry of a consent order together with an executed agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's Rules; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The Commission having thereafter considered the matter and having thereupon provisionally accepted the executed consent agreement, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent New England Tractor Trailer Training of Massachusetts, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 542 East Squantum St., in the city of Quincy, Massachusetts.

Respondent New England Tractor Trailer Training of Connecticut, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at Main St., in the city of Somers, Connecticut.

Respondent Arlan Greenberg is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

*It is ordered,* That respondents New England Tractor Trailer Training of Massachusetts, Inc., New England Tractor Trailer Training of Connecticut, Inc. corporations, their successors and assigns, and their officers and Arlan Greenberg, individually and as an officer of said corporations and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with advertising, offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driving or any other subject, trade or vocation or of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing orally, visually, in writing or in any other manner, directly or by implication, that:

(a) Respondents operate, represent or are affiliated with trucking companies, employers of truck drivers or any industry for which enrollees of any course are being trained; or misrepresenting, in any manner, the nature of respondents' business.

(b) Employment is being offered when the real purpose of such offer is to obtain leads to prospective purchasers of such training courses.

(c) Respondents have been requested by trucking companies or any other business or organization to train persons for specific jobs; or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

(d) There is a need or demand of any size, proportion or magnitude for persons completing any of the courses offered by the respondents in the field of truck driving or any other field, or otherwise representing that opportunities for employment, or opportunities of any size, figure or number are available to such persons or that persons completing said courses will or may earn any specific amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 6 of the order.

(e) Respondents or others provide a placement service which will or may secure a job for graduates of said courses.

(f) Graduates of said courses are assured of placement in the positions for which they have been trained; or representing that graduates of said courses will easily attain employment or that said courses are effective in preparing or qualifying any graduate for employment.

(g) Any person engaged in the promotion, offering for sale, sale,

distribution or other use of said courses is a trained admissions counselor or vocational counselor; or misrepresenting the training, experience, title, qualifications or status of such person or the import or meaning of any advice given by or any other statement made by any such person.

(h) Respondents accept only qualified candidates for enrollment in said courses.

(i) Said courses provide a minimum of 20 hours of road-driving instruction, when such representations do not accurately disclose the actual number of hours of behind-the-wheel road-driving instruction furnished to enrollees; or misrepresenting, in any manner, the number of actual hours of behind-the-wheel road-driving instruction furnished to enrollees.

2. Placing advertisements in "Help Wanted" columns, or failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any truck driver training course offered by respondents, the following information:

(a) The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of truck drivers prescribe a minimum age of twenty-one (21) years of age for drivers.

(2) A tractor trailer operator's license issued by the State is necessary to qualify an individual to operate a tractor trailer.

(3) Many employers of truck drivers give preferential consideration in hiring to driver applicants with actual truck-driving experience.

4. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads that respondents' business is solely and exclusively that of a private school, not affiliated with any members of the trucking industry or any member of any other industry.

5. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Paragraph 6 of this order and prescribed in Appendix A.

6. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction offered by respondents, the following information in the

format prescribed in Appendix A and for a base period designated as described in Appendix B:

(1) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based; such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (2) above;

(4) A list of firms or employers which are currently hiring graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (2) above.

*Provided, however,* this paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period established pursuant to Appendix B as prescribed in this paragraph. However, during such period, the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this paragraph:

DISCLOSURE NOTICE

This school [or course, as the case may be] has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school [course].

7. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in boldface type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of

instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point boldface type the following information and statements:

NOTICE OF CANCELLATION

*(enter date of transaction)*

*(Date)*

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN TEN (10) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND

ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLERS' EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY (20) DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PAYMENT FOR SAID GOODS.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [*Name of Seller*], AT [*address of seller's place of business*] NOT LATER THAN MIDNIGHT OF (*Date*).

I HEREBY CANCEL THIS TRANSACTION.

*(Date)*

*(Buyer's Signature)*

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective enrollee's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within ten (10) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by respondent; (iii) cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

(f) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph.

8. Making any representations of any kind whatsoever in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driver training or any other course offered to the public in any field in commerce for which respondents have no reasonable basis prior to the making or dissemination thereof.

9. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner, or by the acts and practices prohibited by the order.

## II

1. *It is further ordered, That:*

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order;

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this paragraph with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request.

(c) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order;

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order;

(e) Respondents herein inform the persons or entities described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order;

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on his or her own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance.

(h) Respondents herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

2. *It is further ordered*, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

3. *It is further ordered*, That the respondent corporations shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondents which may affect compliance obligations arising out of this order.

4. *It is further ordered*, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

### III

*It is further ordered*, That:



1. Respondents shall submit to the Commission, within five (5) days after the date this order is served on respondents (hereinafter "date of service"), a notarized affidavit, executed by respondents' president, to the effect that respondents have made or have caused to be made a good faith search of documents that pertain to purchasers of respondents' tractor trailer training course of instruction, and that respondents, to the best of their knowledge, have previously or simultaneously with said affidavit submitted to the Commission the names of all tractor trailer course purchasers covered by this agreement.

2. Respondents or their designee shall make an inquiry in writing on the one hundred and twentieth (120th) day after the date of service, in the language, manner and form shown in Appendices C and D, via certified mail with return receipt requested and with a self-addressed, postage prepaid envelope, to the home address of each former purchaser of one of respondents' tractor trailer courses who appears on a list of such purchasers to be supplied to respondents by the Commission within sixty (60) days after the date of service.

3. With respect to each purchaser whose mailed inquiry is returned undelivered or whose aforesaid return receipt card is not returned, respondents or their designee shall have a duty to mail on the one hundred and forty-fifth (145th) day after the date of service the same inquiry, via first class mail to such purchaser's business address as appears in personal information records, including but not limited to personal qualification charts, placement records, and survey records, maintained by respondents.

4. On the two hundred and seventieth (270th) day after the date of service, corporate respondents shall pay a refund, by check, in an amount derived in accordance with Part III of this order, to each "eligible class member" determined in accordance with Part III of this order.

5. "Eligible class member" means only those persons who:

(a) Enrolled during the period of time from January 1, 1973 to December 31, 1973 in respondents' tractor trailer courses; and

(b) Did not have his course tuition paid in full by a State or local department or division of vocational rehabilitation; and

(c) Completed respondents' tractor trailer course; and

(d) (1) Sought employment as a tractor trailer truck driver; or

(2) For reasons related to the sufficiency or quality of the training, or job demand, elected not to seek employment as a tractor trailer truck driver; and

(e) After completion of respondents' course, did not attain employment as a tractor trailer truck driver.

6. Each refund shall be accompanied by a letter in the language, manner and form shown in Appendix E; and a notice in the language, manner and form shown in Appendix F shall be sent via first class mail, with the sender's return address on the face of the envelope, to the last known home address of all persons whose returned questionnaire show them to be ineligible for a refund under Part III of this order.

7. Corporate respondents shall make pro rata refund payments to each eligible class member based upon the proportion that total tuitions paid by or for all such members bear to the total amount available for refunds as provided in Part III of this order, except that members whose tuition was paid in part by a State or local department or division of vocational rehabilitation shall receive a pro rata refund based only on that amount of their tuition not paid by a State or local department or division of vocational rehabilitation. In no event shall any member receive an amount greater than the tuition paid by or for such member.

8. Corporate respondents shall ultimately provide a sum of no greater than twenty five thousand dollars (\$25,000) solely to provide refunds under Part III of this order. No charges against this amount shall be made for administrative costs, which shall be absorbed by the corporate respondents.

9. Respondents shall deposit, on or before the tenth business day after the date of service, the sum of ten thousand dollars (\$10,000) into an account at a banking institution to be agreed on between respondents and the Commission's representative. The principal amount of said bank account shall be available only for the payment of refunds under the provisions of Part III of this order. Withdrawals and orders against this account shall, by agreement, be effective only when countersigned by the individual respondent, together with the Commission's representative.

10. Respondents shall file, within one hundred and eighty (180) days after the date of service, under Rule 3.61 (d) of the Commission's Rules of Practice, a written request for advice as to whether their determination of who is an eligible class member complies with the terms of this order provision. Respondents shall submit simultaneously with their request all Appendix D questionnaires they have received as of the date said request for advice is filed. Respondents shall also, at this time, present any challenges to the factual accuracy of any questionnaire together with substantiating material; such challenges and substantiating material shall be presented solely as a means of assisting the Commission in furnishing respondents an advisory opinion pursuant to said Rule 3.61(d); *provided*, that the Commission shall render its advice to respondents and return all Appendix D question-

naires to respondents within two hundred and forty (240) days after the date of service.

11. Corporate respondents or their designee shall contact and deliver a refund check to each eligible class member or his legal representative. For such purpose, corporate respondents shall, among other things, request the last known address of the eligible class member from the Postal Service, telephone the eligible class member or request the assistance of the Social Security Administration.

12. Respondents shall, on the two hundred and eightieth (280th) day after the date of service, file with the Commission a report in writing setting forth the manner and form in which they have complied with Part III of this order.

13. Respondents shall maintain records and documents for two (2) years after the date this order is served on respondents, which demonstrate that respondents have complied with Part III of this order.

14. It is agreed that should any duty required to be performed on a day certain under Part III of this order fall upon a nonbusiness day, the parties herein may perform such duties on the next following business day.

*It is further ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

APPENDIX A

DISCLOSURE FORM

(NAME OF SCHOOL)

DROP OUT AND PLACEMENT RECORD FOR

(NAME OF COURSE) FOR THE PERIOD OF (DATE) TO (DATE)

- 1. TOTAL ENROLLEES [Number]
- 2. TOTAL WHO FAILED TO COMPLETE THE COURSE [Number]
- 3. PERCENTAGE WHO FAILED TO COMPLETE THE COURSE [%]
- 4. TOTAL NUMBER OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM [Number]
- 5. PERCENTAGE OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS

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- COURSE OF STUDY PREPARED  
THEM [% of Enrollees]
6. PERCENTAGE OF GRADUATES  
WHO OBTAINED EMPLOYMENT IN  
THE POSITION FOR WHICH THIS  
COURSE OF STUDY TRAINED THEM [% of Graduates]
7. NUMBER AND PERCENTAGE OF  
TOTAL ENROLLEES AND  
GRADUATES WHO OBTAINED  
EMPLOYMENT IN THE FOLLOWING  
SALARY RANGES:

Less than \$2.50 Per Hour	[Number] STUDENTS WHICH IS [%] OF TOTAL GRADUATES
\$2.50 - \$3.99 Per Hour	”
\$4.00 - \$5.50 Per Hour	”
\$5.51 - \$7.00 Per Hour	”
More than \$7.00 Per Hour	”

8. EMPLOYERS HIRING PERSONS  
WHO GRADUATE FROM  
[NAME OF COURSE] FROM  
(DATE) TO (DATE) AS TRACTOR  
TRAILER DRIVERS

<i>NAMES OF EMPLOYERS</i>	<i>TOTAL NUMBER OF GRADUATES HIRED</i>
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NOTE: In compiling the foregoing data information was sought from all enrollees indicated by item 1 above, and responses were received from \_\_\_\_\_ enrollees.

## APPENDIX B

1. “Base period” shall mean the calendar period of time: a. From January 1 to June 30, inclusive; or b. From July 1 to December 31, inclusive.
2. The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment experience of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.
3. On October 1 of each year respondents shall begin to disseminate statistics for the

base period which ended on June 30 of that year. Respondents shall continue to distribute said statistics until March 31.

- 4. On April 1 of each year respondents shall begin to disseminate statistics for the base period which ended on December 31 of the previous year, and shall distribute said statistics until September 30.

APPENDIX C

(Name)

(Address)

Re: Eligibility for partial reimbursement to certain former students of (School Name, City, State)

Dear (Name):

In settlement of a proceeding brought by the United States Federal Trade Commission, New England Tractor Trailer Training of Massachusetts, Inc., and New England Tractor Trailer Training of Connecticut, Inc. have agreed to a consent order.

The purpose of the enclosed questionnaire is to determine whether or not you are eligible for a partial reimbursement of tuition. Of course, you are under no obligation to send in this questionnaire, but you *must* return this questionnaire to have your eligibility determined.

You may already have received and sent in a similar questionnaire to the Federal Trade Commission. That questionnaire was used in preparation of the Federal Trade Commission's adjudicative proceeding. Now that this proceeding has been settled, this questionnaire seeks *different* information, information which is necessary to determine your eligibility.

DIRECTIONS: Please mark or fill in the appropriate spaces on the questionnaire enclosed, and return it in the enclosed stamped addressed envelope. It is suggested that you fill out and mail in this questionnaire as soon as possible, but in any event no later than (date which represents the one hundred and seventieth day from the date of service). If you should misplace the envelope provided, please mail your questionnaire to the (Name and address of party on return envelope).

You must follow the directions and should answer all questions which apply to you *completely* and *truthfully*, to the best of your knowledge. Questionnaires which are incomplete or improperly filled out could result in the loss of eligibility.

APPENDIX D

ELIGIBILITY QUESTIONNAIRE

RE: Your attendance at New England Tractor Trailer Somers, Connecticut or Quincy, Massachusetts

- 1. Did you enroll in a tractor trailer training course at the above-named school?  
(CHECK ONE)

YES ..... ( )

NO ..... ( )

IF THE ANSWER IS "NO," DO NOT FILL IN THE REMAINDER OF THE QUESTIONNAIRE: TURN TO THE LAST PAGE, DATE AND SIGN ON THE APPROPRIATE LINES, AND RETURN THE QUESTIONNAIRE IN THE POSTAGE-PAID ENVELOPE.

2. In what month and year did you enter the school? (You must give *both* month and year)

MONTH/YEAR \_\_\_\_\_

3. Did you complete the course? (CHECK ONE)

YES ..... ( )

NO ..... ( )

4. When you left the school did you make any effort to seek a job as a tractor trailer driver? (CHECK ONE)

YES (SKIP TO Q. 6) ..... ( )

NO ..... ( )

5. Please give the *most important* reason why you did *not* seek a job in the tractor trailer field: (CHECK ONE ONLY)

- a. I took the course for advancement in my job and not for the purpose of seeking a job as a tractor trailer driver ..... ( )
- b. I preferred a job in another field (such as factory worker or salesman) ..... ( )
- c. I decided I did not want a job driving a tractor trailer truck ..... ( )
- d. I decided I would not be able to find a job as a tractor trailer driver due to a lack of tractor experience ..... ( )
- e. I decided I would not be able to find a job as a tractor trailer driver because of insufficient training, or because of the quality of the training ..... ( )
- f. I decided I would not be able to find a job as a tractor trailer driver in that field due to a lack of demand ..... ( )
- g. I married or started a family ..... ( )
- h. I was drafted or enlisted in the military service ..... ( )
- i. I went to college or other schooling ..... ( )
- j. Other (PLEASE DESCRIBE) ..... ( )

6. Have you ever attained a job as a tractor trailer driver after you left the school?

YES ..... ( )

NO ..... ( )

7. How much in tuition did you pay?

AMOUNT: \$ \_\_\_\_\_

8. Did a state or local department or division of vocational rehabilitation pay any of the tuition for the course for which you enrolled? (CHECK ONE)

YES ..... ( )

NO ..... ( )

9. How much of your tuition was paid by a State or local department or division of vocational rehabilitation?

AMOUNT \$ \_\_\_\_\_

10. Have you ever received a refund of any tuition money from the above-named school? (CHECK ONE)

YES ..... ( )

NO ..... ( )

11. How much was the refund?

AMOUNT \$ \_\_\_\_\_

Please attach to this form any documents or copies of such documents that indicate you paid an amount of money for any course of instruction offered by the above school. If you cannot provide such documents, your eligibility to receive reimbursement will not be affected.

WARNING: It is a Federal crime for anyone to knowingly and willfully make a false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. §1001.

Signature

Date

Print Name Here

Social Security No.

APPENDIX E  
IMPORTANT NOTICE

(Name)

(Address)

Dear (Name):

Pursuant to an order of the Federal Trade Commission issued on \_\_\_\_\_, New England Tractor Trailer Training of Massachusetts, Inc., and New England Tractor Trailer Training of Connecticut, Inc. have been directed to make [percentage] per cent refunds of tuition to certain students who had enrolled in tractor trailer training courses offered by our companies.

The order of the Commission contains the provisions identifying the class of persons eligible for refunds, and the procedures for making refunds. (You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580. Refer to "New England Tractor Trailer, Docket No. C-\_\_\_\_")."

In accordance with the provisions of the order, it has been determined that you are entitled to a refund of \$ \_\_\_\_\_. A check for this amount is enclosed.

NEW ENGLAND TRACTOR TRAILER  
TRAINING OF MASSACHUSETTS, INC.

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NEW ENGLAND TRACTOR TRAILER  
TRAINING OF CONNECTICUT, INC.By \_\_\_\_\_  
Arlan Greenberg  
President

Enclosure.

## APPENDIX F

## IMPORTANT NOTICE

Pursuant to an order of the Federal Trade Commission issued on \_\_\_\_\_, New England Tractor Trailer Training of Massachusetts, Inc. and New England Tractor Trailer Training of Connecticut, Inc. were directed to make partial reimbursements of tuition to certain students who had enrolled in tractor trailer training courses. The order of the Commission contains the provisions identifying the class of persons eligible for reimbursement and the procedures for making reimbursements.

In accordance with the provisions of the order, it has been determined, based upon your responses to the "Eligibility Questionnaire," that you are not eligible for reimbursement.

The order specified that the class of purchasers entitled to reimbursement was limited to those persons who meet *all* of the following tests:

1. Enrolled in a tractor trailer training course from January 1, 1973 through December 31, 1973; and
2. Did not have his course tuition paid in full by a State or local department or division of vocational rehabilitation; and
3. Completed the training course; and
4. Sought employment as a tractor trailer driver *OR* elected not to seek such employment because of reasons related to sufficiency or quality of the course, or job demand; and
5. After completion of the course, did not attain employment as a tractor trailer truck driver.

You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580, (refer to "New England Tractor Trailer Training, Docket No. C \_\_\_\_\_.")



## Order

## IN THE MATTERS OF

CHRYSLER MOTORS CORPORATION, ET AL. D. 9072  
 FORD MOTOR COMPANY, ET AL. D. 9073  
 GENERAL MOTORS CORPORATION, ET AL. D. 9074

*Dockets 9072, 9073, 9074. Orders, July 13, 1976*

Affirmance of administrative law judge's orders granting limited intervention on issue of relief but denying leave to intervene on issues relating to liability.

*Appearances*

For the Commission: *Sharon S. Armstrong, Randall H. Brook, Gregory L. Colvin, Ronald G. Sims and Sarah J. Hughes.*

For the respondents Chrysler Motors Corp., et al.: *J. D. Owens and A. L. Ronquillo, Troy, Mich., H. Raymond Cairncross, Seattle, Wash., Clifford L. Johnson and Walter B. Maher, Detroit, Mich., Robert Ehrenbard, Keller, Drye & Warren, New York City and Stein, Mitchell & Mezones, Washington, D.C.*

For the respondents Ford Motor Company, et al.: *Wald, Harkrader & Ross and Stein, Mitchell & Mezones, both of Washington, D.C., Hoessler, Stamer & Esler, Portland, Oreg., David R. Larrouy and Jerry D. Bringard, both of Dearborn, Mich.*

For the respondents General Motors Corp., et al.: *John J. Higgins and James P. Melican, Jr., Weil, Gotshal & Manges, New York City.*

ORDER AFFIRMING ORDERS OF ADMINISTRATIVE LAW JUDGE  
 GRANTING LIMITED INTERVENTION

The complaints in these matters challenge the automobile repossession practices of the respondent automobile manufacturing corporations, their credit subsidiaries and a named dealer of each manufacturer. On May 12, 1976, the administrative law judge ( "ALJ" ) issued orders granting the National Automobile Dealers Association ( "NADA" )<sup>1</sup> a limited right of intervention on the issue of relief but denying NADA leave to intervene on issues relating to liability. Pursuant to Section 3.23(a) of the Rules of Practice, NADA applies for review of the portions of the ALJ's rulings denying it permission to intervene on liability issues.

"The determination of whether or not justification exists to warrant intervention requires a delicate balancing process in which the interests of the applicant and the applicant's potential contribution to the proceeding must be weighed against the detriment to the public

<sup>1</sup> According to NADA, the association has a total of approximately 20,000 automobile dealers, of which 2,723 are Chrysler dealers, 8,690 are General Motors dealers, and 4,388 are Ford dealers.

interest resulting from unduly complicating and prolonging the proceedings." *Heublein, Inc.*, 82 F.T.C. 1826, 1829 (1973). In assessing the applicant's potential contribution, the Commission has required a demonstration that the person seeking intervention desires to raise "substantial issues of law or fact which would not otherwise be properly raised or argued. \* \* \*" *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1669 (1970).

There can be little question that many members of NADA have a significant interest in the outcome of these proceedings. What is less clear is whether NADA would be likely to raise significant legal or factual issues which would not otherwise be properly raised or argued. The ALJ concluded that at least one respondent, the named dealer, in each of these proceedings would defend against all substantial legal and factual issues which might be relevant to the alleged illegal acts of unnamed dealers who might be adversely affected by any final orders that issue. He also noted that the automobile manufacturers and credit subsidiaries had an interest "in contesting each substantial legal or factual issue which the complaint alleges as a basis" for liability.<sup>2</sup>

NADA responds that the manufacturers and credit subsidiaries may not defend the practices of dealers but, instead, defend on the ground that they are not liable for the dealers' practices. The association also argues that the three named dealers are likely to defend their own practices and not those of other unnamed dealers.

NADA is correct, to the extent that complaint counsel attempt to establish the conduct of unnamed dealers as a basis for liability of the manufacturers or their credit subsidiaries, and to the further extent that this liability (if established) were deemed adequate to support an order requiring the alteration of important contractual relationships between these unnamed dealers and their suppliers (of cars or credit). *Cf. Heublein, Inc., supra*, 82 F.T.C. at 1829. NADA's intervention would only extend, of course, to legal and factual issues bearing on unnamed dealer conduct, and not to any other issues (*e.g.*, the conduct of named respondents).

In the present posture of these cases, however, it is impossible to determine with sufficient certainty the extent to which unnamed dealer conduct will figure in this case, and whether, with respect to those issues, NADA will raise substantial issues "which would not otherwise be properly raised or argued \* \* \* ." *Firestone, supra*, 77 F.T.C. at 1669. We will, therefore, affirm the ALJ's order with the observation that we will be favorably disposed toward a renewal of NADA's

<sup>2</sup> On motion of Ford and Ford Credit, the law judge subsequently noted that Ford Credit would not necessarily be required to defend all of the repossession practices of Ford dealers. Clarification of Order Granting Limited Intervention to the National Automobile Dealers Association, May 25, 1976.

application to intervene on liability issues upon a showing that significant issues in which NADA's members have an interest will not be adequately presented by the parties.<sup>3</sup> (It should be noted, of course, that this order in no way affects NADA's intervention on relief, since that aspect of the ALJ's order has not been appealed.) Accordingly,

*It is ordered*, That the aforesaid orders granting limited intervention be, and they hereby are, affirmed.

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<sup>3</sup> An appropriate time for reconsideration might be at a prehearing conference convened prior to the commencement of respondents' discovery. Respondents could be asked to indicate the extent of discovery they contemplated on the various liability issues:

*Intervention might then be permitted on any substantial, material issues as to which respondents planned to undertake insufficient discovery to permit an adequate presentation.*