IN THE MATTER OF

HERSON'S, INC., TRADING AS HERSON'S AND HERSON'S AUTO & APPLIANCE CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2446. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Washington, D.C., retailer and distributor of used cars, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Alan Cohen* and *Bernard Rowitz.*

For the respondents: *Irving B. Yochelson, Grossberg, Yochelson, Fox & Beyda*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Herson's, Inc., a corporation, trading and doing business as Herson's and Herson's Auto & Appliance Co., and Gerald Herson, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Herson's, Inc., trading and doing business as Herson's and Herson's Auto & Appliance Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 4100 Georgia Avenue, N.W., Washington, D.C.

Respondent Gerald Herson is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute a binding conditional sales contract. Respondents also provide these customers with a Credit Disclosure Statement.

By and through the use of the credit disclosure statement, respondents:

1. Fail in some instances to disclose the annual percentage rate with an accuracy at least to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Fail in some instances to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated 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 Washington, D.C. 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 Truth in Lending Act and the implementing regulation promulgated thereunder, and 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;

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, 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 thirty (30) 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 Herson's, Inc., trading and doing business as Herson's and Herson's Auto & Appliance Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 4100 Georgia Avenue, N.W., Washington, D.C.

Respondent Gerald Herson is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

It is ordered, That respondents Herson's, Inc., a corporation, trading and doing business as Herson's and Herson's Auto & Appliance Co., or under any name or names, its successors and assigns and its officers, and Gerald Herson, individually and as an officer of said corporation and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act

(Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate, with an accuracy of at least to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failing to disclose the annual percentage rate computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

3. Failing in any consumer credit transaction or advertising to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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.

It is further ordered, That respondents 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.

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.

Complaint

IN THE MATTER OF

HERSON AUTO PARTS & GLASS, INC., ET AL.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2447. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Washington, D.C., retailer and distributor of used cars, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz.*
For the respondents: *pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Herson Auto Parts & Glass, Inc., a corporation, and Nathaniel Herson, individually and as an officer of said corporation, herein after sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Herson Auto Parts & Glass, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 72 Florida Avenue, N.E., Washington, D.C.

Respondent Nathaniel Herson is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing customers to enter into credit sales contracts and execute binding conditional sales contracts accompanied by credit sales disclosure statements. On the contracts referred to hereinabove in this paragraph, hereinafter referred to as "the contract," respondents have provided certain limited consumer credit cost information, but have not provided these customers with any other consumer credit cost disclosures.

By and through the use of the contract, respondents:

1. Fail to disclose the annual percentage rate accurately to the nearest quarter of one percent in accordance to Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated 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 Washington, D.C. 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 Truth in Lending Act and the implementing regulation promulgated thereunder; 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 as 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 Acts, 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 thirty (30) days, now in further conformity with such 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 Herson Auto Parts & Glass, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 72 Florida Avenue, N.E., Washington, D.C.

Respondent Nathaniel Herson is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

It is ordered, That respondents Herson Auto Parts & Glass, Inc., a corporation, its successors and assigns, and its officers, and Nathaniel Herson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), to forthwith cease and desist from:

1. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failing in any consumer credit transaction or advertisement to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents 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.

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.

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.

IN THE MATTER OF

MARKET MOTORS, INC., TRADING AS AUTO MARKET, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2448. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Washington, D.C., retailer and distributor of used cars, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz.*
For the respondents: *pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Market Motors, Inc., a corporation, trading and doing business as Auto Market, and Abe Mason, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 Market Motors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 510 K Street, N.W., Washington, D.C. Said corporate respondent trades and does business as Auto Market.

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

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sales" is defined in Regulation Z, respondents have caused and are causing customers to enter into credit sales contracts and execute binding conditional sales contracts, accompanied by credit sales disclosure statements. On the contracts referred to hereinabove in this paragraph, hereinafter referred to as "the contract," respondents have

provided certain limited consumer credit cost information, but have not provided these customers with any other consumer credit cost disclosures.

By and through the use of the contract, respondents:

1. Fail to disclose the annual percentage rate accurately to the nearest quarter of one percent in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

3. Fail to accurately disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated 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 Washington, D.C. 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 Truth in Lending Act and the implementing regulation promulgated thereunder; 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 Acts, 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 thirty (30) 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 Market Motors, Inc., trading and doing business as Auto Market, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 510 K Street, N.W., Washington, D.C.

Respondent Abe Mason is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

It is ordered, That respondents Market Motors, Inc., a corporation, trading and doing business as Auto Market, or under any name or names, its successors and assigns, and its officers, and Abe Mason, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

3. Failing to accurately disclose the sum of the cash price, all charges which are included in the amount financed but which are

not a part of the finance charge, and the finance charge, as required by Section 226.8(c) (8) (ii) of Regulation Z.

4. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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.

It is further ordered, That respondents 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.

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.

IN THE MATTER OF

RALPH M. SUTHERLAND TRADING AS NEW AUTO LAND

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2449. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Fairfax, Virginia, retailer and distributor of used cars, among other things to cease violating the Truth in Lending Act by failing to

disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Michael Mpras* and *Bernard Rowitz.*
For the respondent: *pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ralph M. Sutherland, an individual trading and doing business as New Auto Land, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 Ralph M. Sutherland is an individual trading and doing business as New Auto Land with his principal office and only place of business located at 11325 Lee Highway, Fairfax, Virginia.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent in the ordinary course of business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused, and is now causing, customers to execute a binding Used Car Order Contract, hereinafter referred to as the "Order Contract."

PAR. 5. By and through the use of the "Order Contract," respondent:

1. Fails to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Fails, in some instances, to disclose the number, amounts, and due dates of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

3. Fails to disclose the difference between the "cash price" and the "total downpayment," and to describe that amount as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

4. Fails to disclose the amount of the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

5. Fails to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof respondent has thereby violated 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 Washington, D.C. 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 Truth in Lending Act and the implementing regulation promulgated thereunder and 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 Acts, 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 thirty (30) 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 Ralph M. Sutherland is an individual, trading and doing business as New Auto Land, with his office and only place of business located at 11325 Lee Highway, Fairfax, Virginia.

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, Ralph M. Sutherland, an individual trading and doing business as New Auto Land, or under any other name or names, and respondent's agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failing to disclose the number, amount and due dates of payments, scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

3. Failing to disclose the "unpaid balance of cash price" in the manner and form required by Section 226.8(c)(3) of Regulation Z.

4. Failing to disclose the amount of the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

5. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

6. Failing, in any consumer credit transaction or advertising, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, at the time and in the

manner, form and amount required by Section 226.6, Section 226.7, Section 226.8, Section 226.9 and Section 226.10 of Regulation Z.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth, in detail, the manner and form in which he has complied with the order to cease and desist contained herein.

IN THE MATTER OF

RAY'S USED CARS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2450. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Beltsville, Md., retailer and distributor of used cars, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Michael Mpras* and *Bernard Rowitz*.

For the respondents: *pro se*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation

promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ray's Used Cars, Inc., a corporation, and Wilbur R. Cummings, an individual and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 Ray's Used Cars, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 10411 Baltimore Boulevard, Beltsville, Maryland.

Respondent Wilbur R. Cummings, is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are now causing customers to execute a binding used car order contract, hereinafter referred to as the "Order Contract."

By and through the use of the "order contract," respondents:

1. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price" as required by Section 226.8(c)(8)(ii) of Regulation Z.

2. Fail to use the term "cash price" as defined in Section 226.2(i) of Regulation Z, to describe the purchase of the automobile, as required by Section 226.8(c)(1) of Regulation Z.

PAR. 5. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their used cars as "advertisements" is defined in Regulation Z. These advertisements aid, promote or assist, directly or indirectly, extensions of consumer credit in connection with the sale of these used cars. By and through the use of the advertisements, respondents:

1. Fail to state the rate of any finance charge expressed as an "Annual Percentage Rate," as required by Section 226.10(d)(1) of Regulation Z.

2. Fail to make disclosures clearly and conspicuously, and in the form and manner prescribed under Section 226.6(a) of Regulation Z, as required by Section 226.10(d) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated 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 Washington, D.C. 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 Truth in Lending Act and the implementing regulation promulgated thereunder and 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 Acts, 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 thirty (30) 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 Ray's Used Cars, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 10411 Baltimore Boulevard, Beltsville, Maryland.

Respondent Wilbur R. Cummings, is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his principal office and place of business is located at the above stated address.

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

It is ordered, That respondents Ray's Used Cars, Inc., a corporation, its successors and assigns, and its officers, and Wilbur R. Cummings, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension or arrangement for the extension of consumer credit or any advertisement to aid, promote, or assist, directly or indirectly in the extension of consumer credit, as "consumer credit" and "advertisement" as defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to make disclosures clearly and conspicuously and in the form and manner prescribed under Section 226.6(a) of Regulation Z, as required by Section 226.10(d) of Regulation Z.

2. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

3. Failing to state, in its advertisements, the rate of any finance charge expressed as an "annual percentage rate," as required by Section 226.10(d)(1) of Regulation Z.

4. Failing to use the term "cash price," as defined in Section

226.2(i) of Regulation Z, to describe the purchase price of the automobile, as required by Section 226.8(c)(1) of Regulation Z.

5. Failing in any consumer credit transaction or advertising, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, at the time and in the form, manner and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

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

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present 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.

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 they have complied with this order.

IN THE MATTER OF

VERNON WOLVERTON, TRADING AS SUBURBAN MOTORS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2451. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Hyattsville, Md., retailer and distributor of used cars, among other things to cease violating the Truth in Lending Act by failing to

disclose to consumers, in connection with the extention of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Michael Mpras* and *Bernard Rowitz.*
For the respodnent: *pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Vernon Wolverton, an individual trading and doing business as Suburban Motors, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 Vernon Wolverton is an individual trading and doing business as Suburban Motors, with his principal office and only place of business located at 4211 Crittenden Street, Hyattsville, Maryland.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent in the ordinary course of business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused, and is now causing, customers to execute a binding conditional sales contract, hereinafter referred to as the "Sales Contract."

PAR. 5. By and through the use of the "Sales Contract," respondent:

1. Fails to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment in the manner and form required by Section 226.8(c)(3) of Regulation Z.

2. Fails to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as "deferred payment price" as required by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 6. In the ordinary course of his business as aforesaid, respondent causes to be published advertisements of his used cars, as "advertisements" is defined in Regulation Z. These advertisements aid, promote or assist, directly extensions of consumer credit in connection with the sale of these used cars. By and through the use of the advertisements, respondent:

1. Fails to state the rate of any finance charge expressed as an "annual percentage rate," as required by Section 226.10(d)(1) of Regulation Z.

2. Fails to make disclosures clearly, conspicuously, and in a meaningful sequence, and in the form and manner prescribed under Section 226.6(a) of Regulation Z, as required by Section 226.10(d) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof respondent has thereby violated 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 Washington, D.C. 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 Truth in Lending Act and the implementing regulation promulgated thereunder and 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 has reason to believe that the respondent has violated the said Acts, 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 thirty (30) 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 Vernon Wolverton is an individual, trading as Suburban Motors, with his office and only place of business located at 4211 Crittenden Street, Hyattsville, Maryland.

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 Vernon Wolverton, an individual trading and doing business as Suburban Motors, or under any other name or names, his successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit or any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to make disclosures clearly, conspicuously, and in a meaningful sequence, and in the form and manner prescribed under Section 226.6(a) of Regulation Z, as required by Section 226.10(d) of Regulation Z.

2. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment in the manner and form required by Section 226.8(c)(3) of Regulation Z.

3. Failing to disclose the sum of the cash price, charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that

sum as "deferred payment price" as required by Section 226.8(c)(8)(ii) of Regulation Z.

4. Stating, in any advertisement, the rate of any finance charge unless it is expressed as an "annual percentage rate" as required by Section 226.10(d)(1) of Regulation Z.

5. Failing, in any consumer credit transaction or advertising, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, at the time and in the manner, form and amount required by Section 226.6, Section 226.7, Section 226.8, Section 226.9 and Section 226.10 of Regulation Z.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which he has complied with the order to cease and desist contained therein.

IN THE MATTER OF

HAMMOND BEGUN TRADING AS FREIGHT LIQUIDATORS

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FABRICS PRODUCTS IDENTIFICATION ACTS

Docket C-2452. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring a Glen Burnie, Maryland, retailer of rugs, sewing machines, stereo radios and phonographs, and various other articles of merchandise, among other things to cease using the words "Liquidators,"

"Freight," "Forwarding," or words of similar import or meaning in respondent's trade or corporate name; misrepresenting the source, character, or nature of merchandise being offered for sale; misrepresenting the sale price(s) as reduced; failing to maintain adequate records; using misleading or deceptive sales plans; using "bait and switch" selling tactics; advertising merchandise falsely or misleadingly; misrepresenting limited offers or supplies; falsely advertising and misbranding its textile fiber products. Respondent is further required to publish, for one year, in connection with its advertising a notice stating that the respondent has been found by the Federal Trade Commission to have been engaged in "bait and switch" advertising solely to sell products other than those advertised.

Appearances

For the Commission: *Alice Kelleher* and *Everette Thomas.*
For the respondent: *pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the party named in the caption above, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification 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 follow:

PARAGRAPH 1. Repondent Hammond Begun is an individual and a former partner, trading and doing business as Freight Liquidators at 1616 North Ritchie Highway, Glen Burnie, Maryland.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of rugs, sewing machines, stereo radios and phonographs, and various other articles of merchandise, to the purchasing public.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR 3. In the course and conduct of his business as aforesaid, respondent has caused, and now causes, the dissemination of certain advertisements concerning the aforesaid articles of merchandise, by various means in commerce, as "commerce" is defined in the Federal

Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of radio broadcasts transmitted by radio stations located in the State of Virginia, 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 respondent's said merchandise.

In the further course and conduct of his business, as aforesaid, respondent has caused, and now causes, his said merchandise to be shipped across state lines between his various retail outlets located in the States of Virgina and Maryland, for sale to purchasers thereof located in the States of Virginia and Maryland, and the District of Columbia. Thus, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and disseminated as aforesaid, and by means of advertising circulars disseminated by hand delivery to numerous places of residence in the States of Virginia and Maryland and the District of Columbia, respodent has made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

PUBLIC NOTICE

(4 DAYS ONLY!)
LIQUIDATION SALE

BANKRUPTCY STOCK—FACTORY & MILL CLOSEOUTS
ALL NEW MERCHANDISE—FAMOUS BRAND NAMES

$1,287,350.00 WORTH OF PRE-CUT RUGS AND MILL-END ROLLS, TELEVISIONS, STEREOS AND COMPONENTS & SEWING MACHINES

(HUNDREDS OF ITEMS NOT SHOWN BELOW ARE ALSO ON DISPLAY.)
BE EARLY FOR BEST SELECTION

* * * * * * *

STEREO

UNCLAIMED FREIGHT

BANKRUPTCY STOCK FACTORY CLOSEOUTS

TRUCK LOAD LIQUIDATION

All New Merchandise
LAST NOTICE FOR THIS WEEKEND
FRIDAY, SATURDAY, SUNDAY & MONDAY

ONLY $88

New 1972 (in cartons), 5-piece Stereo Component Units, 40 Watts, AM/FM radio, deluxe 4 spd. BSR turntable, 4-speaker sound system, equipped for 8 track tape player, tape recorder, etc. Only $88.

Only $147

New 5-Piece Components 4-speed Deluxe Turn Tbl., 100 watts, AM/FM radio, deluxe 4-spd. turntable w/diamond stylus, 4-speaker air suspension audio system. Equip. for 8-trk. cassette. Orig ; $329. Yours for $147.

Only $108

New 1972 (in cartons), famous make, 100 watt tuners w/AM/FM multiplex equipped for 8 track or cassette. Only $108.

From Only $88

New console stereo, various sizes & finishes. Lge. assortment /w/AM/FM radio & deluxe 4 spd. changer.

FREIGHT LIQUIDATORS

Deal With The Store Near You * * *

* * * * * * *

RUGS
12x9's $19

WAREHOUSE LIQUIDATION

4 DAYS ONLY!

All 100% nylon, acrilan, polyester pile. Full sizes 9x12, 12x12, 12x15, 12x21, 6x9, also odd sizes and various size ovals. In gold, green, red, blue, and other exciting colors. Shags, plushes, twists and sculptured. Will give a warm look to your apt.

OVALS—FRINGED $8

WE LIQUIDATE RUGS FOR FAMOUS SOUTHERN MILLS. ALL ARE GUARANTEED PERFECT.

MASTER CHARGE, BANKAMERICARD, TERMS AVAILABLE

FREIGHT LIQUIDATORS WAREHOUSES

* * * * * * *

FREIGHT LIQUIDATORS

Deal With The Store Near You * * *

BRAND NEW

SEWING
MACHINES $63

You may own a 1971 "Touch-N-Stitch" Zig-Zag, new stretch stitch, embroiders, monograms, appliques, makes buttonholes, etc., all without attachments. Ordered for schools, "UNCLAIMED BY THEM." 25-year guarantee and instructions.

* * * * * * *

PAR. 5. By and through the use of the above-quoted 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 respondent's salesmen to customers and prospective customers, the respondent has represented, and is now representing, directly or by implication, that:

1. By and through the use of said name "Freight Liquidators," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that he is a liquidator, authorized adjustor or agent engaged in the sale or disposition of bankrupt, salvage, distrained or other distress or transportation company surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims.

2. By and through the use of said name "Freight Liquidators," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that merchandise advertised by respondent is bankrupt, salvage, distrained, distress or transportation company surplus merchandise, and therefore has a unique or special disposition.

3. Because of the unique or special disposition of the advertised merchandise, it is being offered at prices below those usually and customarily charged at retail.

4. Purchasers of the advertised merchandise are afforded savings equal to the differences between respondent's advertised prices and those at which the same merchandise is usually and customarily sold at retail.

5. The amount designated as "Orig." was the price at which the merchandise advertised had been sold by respondent in the recent, regular course of his business.

6. Purchasers of the merchandise advertised are afforded savings equal to the differences between the higher and lower prices listed in said statements.

7. Respondent is making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements.

8. Respondent is making a bona fide offer to sell a complete sewing machine without attachments for the advertised price.

9. Certain of respondent's products are unconditionally guaranteed for various periods of time such as twenty-five (25) years.

10. The quantities of merchandise and the time during which such are available for sale are limited.

PAR. 6. In truth and in fact:

1. Respondent is not a liquidator, authorized adjustor or agent engaged in the sale or disposition of bankrupt, salvage, distrained or other distress or transportation company surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims. Instead, respondent is in the business of purchasing the advertised merchandise from manufacturers or suppliers and selling it at retail for his own account to the purchasing public.

2. Merchandise advertised by respondent is not bankrupt, salvage, distrained, distress or transportation company surplus merchandise, and therefore does not have a unique or special disposition.

3. The advertised merchandise is not being offered at prices below those usually and customarily charged at retail.

4. Purchasers of the advertised merchandise are not afforded savings equal to the differences between respondent's advertised prices and those at which the same merchandise is usually and customarily sold at retail.

5. Said merchandise had not been customarily and usually sold at retail by respondent in the recent, regular course of his business for the amounts set out in the advertisements as "Orig."

6. Purchasers of the merchandise advertised are not afforded savings equal to the differences between the higher and lower prices listed in said statements.

7. Respondent is not making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of merchandise similar to that advertised. Members of the purchasing public who respond to said advertisements are either told by respondent's sales-

men that the advertised merchandise is not available, or are shown higher priced merchandise of superior quality, which by comparison disparages and demeans the advertised merchandise. By these and other tactics, purchase of the advertised merchandise is discouraged, and respondent, through his salesmen, attempts to sell and frequently does sell the higher priced merchandise.

8. Respondent is not making a bona fide offer to sell a complete sewing machine without attachments for the advertised price. The advertised price is for a sewing machine head and does not include such essentials as a base or stand, without which the head of the machine is useless.

9. Respondent's products are not unconditionally guaranteed for the period of time stated in said advertisements or orally represented by respondent's salesmen. To the contrary, the only guarantee for respondent's products is that which is provided by the manufacturers thereof, and such guarantees are subject to conditions and limitations not disclosed in respondent's representatives' oral representations.

10. The quantities of merchandise and the time during which such are purportedly available for sale are not limited. In fact, this representation is designed to act as the inducement for the practices set forth in Paragraph Six 7, hereof.

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

PAR. 7. In the course and conduct of his 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 and distribution of merchandise of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and his failure to disclose material facts, as aforesaid, has had, and now has, 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 and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. 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 and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. Respondent is now, and for some time last past has been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including rugs and floor covering and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

PAR. 12. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 13. Among such textile fiber products, but not limited thereto, were rugs which were falsely and deceptively advertised in the Washington Post, a newspaper published in the District of Columbia, having a wide circulation in the District of Columbia and various other States of the United States, in that said rugs were described by such fiber connoting terms among which, but not limited thereto, was

"Acrilan," and the true generic name of the fiber contained in such rugs was not set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent has falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations.

PAR. 15. The acts and practices of respondent as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hammond Begun is an individual and a former partner, trading and doing business as Freight Liquidators at 1616 North Ritchie Highway, Glen Burnie, Maryland.

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 Hammond Begun, individually, and as a former partner, trading and doing business as Freight Liquidators, or under any other trade name or names, and respondent's agents, representatives and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of rugs, sewing machines, stereo radios and phonographs, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Liquidators," "Freight," "Forwarding," or any other word or words of similar import or meaning in or as part of respondent's corporate or trade name or names; or representing, orally or in writing, directly or by implication, that he is a liquidator, authorized adjuster or agent engaged in the sale or disposition of bankrupt, salvage, distrained, distress or transportation company surplus merchandise; or is engaged in liquidating,

adjusting, paying off or otherwise settling indebtedness or claims; or misrepresenting, in any manner, his trade or business status.

2. Representing, directly or indirectly, orally or in writing, that any merchandise offered for sale is bankrupt, salvage, distrained, distress or transportation company surplus merchandise; or misrepresenting, in any manner, the source, character or nature of the merchandise being offered for sale.

3. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and respondent's former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondent for a reasonably substantial period of time in the recent, regular course of his business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared price for said merchandise or services in respondent's trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondent has in good faith conducted a market survey or obtained a similar representative sample of prices in his trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

4. Failing to maintain and produce for inspection or copying, for a period of three years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraph Three of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

5. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

6. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise or services but to obtain leads or prospects for the sale of other merchandise at higher prices.

7. Representing, directly or indirectly, orally or in writing, that any merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise.

8. Discouraging or disparaging, in any manner, the purchase of any merchandise which is advertised or offered for sale.

9. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

10. Advertising or offering merchandise for sale when the advertised merchandise is inadequate for the purposes for which it is offered.

11. Representing, directly or indirectly, orally or in writing, that any product is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondent delivers to each purchaser a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, directly or indirectly, orally or in writing, made to each such purchaser, and unless respondent promptly and fully performs all of his obligations and requirements under the terms of each such guarantee.

12. Representing, directly or indirectly, orally or in writing, that the supply of merchandise or the time during which it is

available for sale is limited unless respondent establishes that his supply of any article of merchandise advertised was not sufficient to meet reasonably anticipated demands therefor, and that his supply could not be replenished through his customary sources.

13. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records from which compliance with the prohibition of Paragraph Twelve of this order can be determined.

II

It is further ordered, That respondent Hammond Begun, individually and as a former partner, trading and doing business as Freight Liquidators, or under any other trade name or names, and respondent's agents, representatives and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said

advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in advertising the fiber content of the floor covering containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

It is further ordered, That respondent do forthwith cease and desist from disseminating, or causing the dissemination of any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondent clearly and conspicuously discloses in each advertisement the following notice set off from the text of the advertisement by a black border:

The Federal Trade Commission has found that we have engaged in bait & switch advertising solely designed to sell products other than those advertised.

One year from the date this order becomes final or any time thereafter, respondent upon showing that he has discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

It is further ordered, That respondent shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of merchandise, or utilized in the advertising, promotion or sale of merchandise.

It is further ordered, That respondent, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondent and each newspaper publishing company, television or radio station, or other advertising media which is

utilized by the respondent to obtain leads for the sale of merchandise, or to advertise, promote, or sell merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the offering for sale, sale of any product, or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent, 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.

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

IN THE MATTER OF

THE KROGER CO.

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

Docket C-2453. Complaint, Sept. 12, 1973—Decision, Sept. 12, 1973.

Consent order requiring a Cincinnati, Ohio, operator of a chain of retail grocery stores selling a variety of food, grocery and nonedible household products, among other things to cease inducing or receiving promotional allowances. Respondent is further required to establish and maintain, for a period of five (5) years, a file containing each offered promotional allowance induced and received. Further, respondent must refund all payments solicited from suppliers for its 1968 Atlanta Division's Kroger Revolution Anniversary.

Appearances

For the Commission: *R. H. Cloe*, *Gordon Youngwood* and *R. W. Rosen.*

For the respondent: *Norman Diamond, of Arnold and Porter*, 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 the Kroger Co. ("Kroger"), a corporation, hereinafter sometimes 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 Ohio with its principal office located at 1014 Vine Street, Cincinnati, Ohio.

PAR. 2. Respondent is now and for many years past has been engaged in the operation of a chain of retail grocery stores, selling a great variety of food, grocery and nonedible household products. Additionally, Kroger operates a chain of retail drug stores, a trading stamp company and several food processing facilities. On January 1, 1972, Kroger had 1,431 retail grocery stores in twenty states. The stores are grouped by divisions according to their geographical location.

In the course of its grocery business, Kroger purchases many types of food, grocery and nonedible household products from a large number of manufacturers, suppliers and handlers of such products. Kroger's sales of its products are substantial, exceeding $3,707,918,000 in 1971, making it the third largest grocery chain in the United States.

PAR. 3. In the course and conduct of its business, Kroger has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Kroger's purchases in commerce for resale are substantial and include a great variety of products from a large number of suppliers located throughout the United States. Kroger causes these products, when purchased by it, to be transported from the places of manufacture or purchase to warehouses or stores located in many states. In many instances, a division warehouse services stores located in several states. In such divisions, Kroger often causes goods delivered to its warehouses to be transported to its stores located in other states. In addition, Kroger disseminates advertising in commerce and receives allowances and payments in commerce from suppliers for advertising and promotional services and facilities.

PAR. 4. In the course and conduct of its business in commerce, Kroger is now and has been in competition with other corporations, persons,

firms and partnerships in the purchase, sale and distribution of food, grocery and nonedible household products.

PAR. 5. In the course and conduct of its business, Kroger has for several years knowingly induced and received from some of its suppliers special allowances and payments and other things of value to or for Kroger's benefit as compensation or in consideration for services or facilities furnished by or through Kroger in connection with the processing, handling, sale or offering for sale of products sold to Kroger by such suppliers, when Kroger knew or should have known that such special allowances and payments and other things of value were not made available on proportionally equal terms to all other customers of such suppliers competing with Kroger in the sale and/or distribution of such suppliers' products.

For example, during early 1968, Kroger's Atlanta Division solicited the participation of its suppliers in a Kroger Revolution Anniversary promotion to be held in May and June 1968. The terms and conditions for participation therein were set forth in a form distributed by Kroger to its suppliers and their brokers. As a result of the solicitation, about 37 suppliers paid Kroger's Atlanta Division approximately $22,000 in fiancial payments, allowances and other thing of value in return for the promotion of their products in the manner indicated in the Kroger solicitation.

Many of the 37 suppliers did not offer or otherwise make available to all of their customers competing with stores of Kroger's Atlanta Division payments, allowances or other things of value for advertising, display or other promotional services or facilities on terms proportionally equal to those granted Kroger. When respondent induced and received the payments, allowances and other things of value from its suppliers, Kroger knew or should have known that it was inducing and receiving payments, allowances and other things of value from its suppliers that the suppliers were not offering or otherwise making available on proportionally equal terms to all other customers competing with respondent in the sale and/or distribution of such suppliers' products.

PAR. 6. The methods, acts and practices of Kroger, as herein alleged, constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

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 therafter 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 thirty (30) 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 the Kroger Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1014 Vine Street, Cincinnati, Ohio.

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 Kroger, a corporation, 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 purchase in commerce, or receipt of consigned merchandise in commerce, as "commerce" is defined in the

Federal Trade Commission Act, of products for resale by Kroger in its retail grocery stores, do forthwith cease and desist, for a period of five years from the effective date of this order, from:

Inducing and receiving promotional allowances, payments or other things of value, solicited by respondent, from any supplier, including consignors as well as vendors, as compensation for or in consideration of advertising and promotional services furnished by or through respondent in connection with special promotions originating with or sponsored by respondent, and involving the sale or offering for sale of such supplier's products, including consigned products, except to the extent that such promotional allowances, payments or other things of value do not exceed the amount made available to respondent as cooperative advertising or promotional allowances pursuant to the cooperative advertising and promotional plans of such supplier offered in the regular course of such supplier's business.

II

It is further ordered, That, for a period of five years from the effective date of this order, respondent Kroger shall establish and maintain at its general office in Cincinnati, Ohio a separate file containing each offered promotional allowance, payment or other thing of value, induced and received, within the meaning of Paragraph I of this order. The file shall be maintained alphabetically, according to suppliers, with all offers and related materials pertaining to each supplier filed chronologically, within that supplier's portion of the file. The information shall be maintained for the effective period of this order. The file shall be made available to employees of the Federal Trade Commission, for inspection and copying, upon written notice of 10 calendar days.

III

It is further ordered, That, within 60 days of the effective date of this order, respondent Kroger shall refund to each supplier granting it an allowance, payment or other thing of value for its 1968 Atlanta Division's Kroger Revolution Anniversary the amount of such allowance, payment or other thing of value.

IV

It is further ordered, That respondent Kroger shall forthwith distribute a copy of this order to the vice president in charge of each of its retail grocery divisions.

V

It is further ordered, That respondent Kroger notify the Commission at least 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 that may affect compliance obligations arising out of the order.

VI

It is further ordered, That, within 60 days after service upon it of this order, respondent Kroger shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order and such other reports as may, from time to time, be required.

IN THE MATTER OF

CONSOLIDATED FOODS CORPORATION

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2(a) OF THE CLAYTON ACT

Docket C-2454. Complaint, Sept. 12, 1973—Decision, Sept. 12, 1973.

Consent order requiring a widely diversified company based in Chicago, Illinois, which, through its Conso Products Company Division, is extensively engaged in the manufacture and distribution of decorative fabric trimmings and accessories, among other things to cease discriminating in price by charging some purchasers higher and less favorable prices for their products than it charges their competitors.

Appearances

For the Commission: *Lester G. Grey.*

For the respondent: *J. Wallace Adair*, of *Howrey, Simon, Baker & Murchison*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Consolidated Foods Corporation has violated and is now violating the provisions of Section 2(a) of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended, hereby issues this complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Consolidated Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 135 South La Salle Street, Chicago, Illinois.

PAR. 2. Respondent is a widely diversified company engaged in many lines of business which it conducts through a number of operating divisions, one of which is its Conso Products Company Division. For fiscal 1971, respondent's total net sales for all its product lines was $1,621,688,000, of which approximately $45,000,000 represented net sales of its Conso Products Company Division.

PAR. 3. Respondent through its Conso Products Company Division, (hereinafter at times referred to as Conso) for many years has been and is now extensively engaged in the business of manufacturing, distributing and selling decorative fabric trimmings and trimmings accessories products to manufacturers, jobbers and retailers. Conso has manufacturing plants and warehouses located in several of the States of the United States. Deliveries by Conso to purchasers and customers have been, and are now, made largely either directly from its manufacturing plants or from its warehouses.

PAR. 4. In the course and conduct of its business, respondent, through its Conso Products Company Division, sells and distributes its decorative fabric trimmings and trimmings accessories products of like grade and quality for use, consumption or resale within the United States to purchasers thereof located in states other than the state of origin of said products, and causes such products, when sold, to be shipped and transported from its place of business in the state of origin to purchasers located in other states. There is now, and has been, a constant current of trade in commerce, as "commerce" is defined in the amended Clayton Act, in said products by Conso between and among the various States of the United States and the District of Columbia.

PAR. 5. Respondent, through its Conso Products Company Division, in the course and conduct of its said business is now, and at all times referred to herein has been, in substantial competition with others engaged in the manufacture, distribution and sale of decorative fabric trimmings and trimmings accessories products in commerce between and among the various States of the United States and the District of Columbia.

Many of Conso's purchasers of said products are, and have been, in substantial competition with other of its purchasers of said products.

PAR. 6. In the course and conduct of its business in commerce, respondent, through its Conso Products Company Division, has been, and is now discriminating in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the prices charged competing purchasers for such products of like grade and quality.

PAR. 7. The effect of Conso's discrimination in price, as above alleged, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which Conso and its purchasers are respectively engaged, or to injure, destroy or prevent competition with Conso and with purchasers from Conso who receive the benefit of such discriminations.

PAR. 8. The acts and practices of the respondent, through its Conso Products Company Division, as alleged above, violate Section 2(a) of the amended Clayton 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 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 Section 2(a) of the Clayton Act, as amended; 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 thirty (30) 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 Consolidated Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 135 South LaSalle Street, Chicago, Illinois.

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 Consolidated Foods Corporation, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of decorative fabric trimmings and trimmings accessories products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

> Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged to any other purchaser competing in fact in the resale or distribution of such products.

"Net price" as used in this order shall mean the ultimate cost to the purchaser, and, for purposes of determining such cost, there shall be taken into account all rebates, allowances, commissions, discounts, credit arrangements, terms and conditions of sale, and other forms of direct and indirect price reductions, by which ultimate cost to the purchaser is affected.

It is further ordered, That the respondent corporation 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 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.

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.

Complaint

IN THE MATTER OF

CLASSIC CARPET CENTER, INC. TRADING AS CARPETERIA, ET AL.

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-2455. Complaint, Sept. 17, 1973—Decision, Sept. 17, 1973.

Consent order requiring a Fairfax, Virginia, retailer of carpets and floor coverings, among other things to cease misrepresenting the word "sale;" misrepresenting prices as reduced; misrepresenting comparative prices; misrepresenting percentage savings; falsely advertising the value of carpet remnants; misrepresenting the availability of supplies and prices to competitors; misrepresenting the amount, type, or extent of credit terms respondents may arrange for its customers; falsely advertising and misbranding its textile fiber products; and failing to maintain adequate records.

Appearances

For the Commission: *Everette E. Thomas.*
For the respondents: *Ronald Goldberg*, Silver Spring, Md.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Classic Carpet Center, Inc., a corporation, trading and doing business as Carpeteria, and Michael J. Lightman and William R. Lightman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Classic Carpet Center, Inc., trading and doing business as Carpeteria, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 9542 Arlington Boulevard, Fairfax, Virginia.

Respondents Michael J. Lightman and William R. Lightman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent. All of the aforementioned respondents cooperate and act together in the carrying out of 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, distribution and installation of carpeting and floor coverings to the public.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning the aforesaid articles of merchandise, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of radio broadcasts transmitted by radio stations located in the States of Maryland and Virginia, 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 respondents' said merchandise.

In the further course and conduct of their business, as aforesaid, respondents have caused, and now cause, their said merchandise to be shipped across state lines between their various retail outlets located in the States of Virginia and Maryland, for sale to purchasers thereof located in the aforesaid states. Thus, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and broadcasts transmitted by radio stations, respondents have made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

TENT SALE 1250 REMNANTS AT SALE PRICES

* * * * * * *

Stock No.	Color	Fiber	Size	Comp. value	Sale price
4315	Blue-green	Nylon	12′ x 14′4″	$200	$111
4246	Rust	Nylon	12′ x 16′	190	125

* * * * * * *

No dealers please

* * * * * * *

INSTANT CREDIT

* * * * * * *

EASY FINANCING

PAR. 5. By and through the use of the above-quoted 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 respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

1. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

2. By and through the use of the words "No dealers please," and other words of similar import and meaning not set out specifically herein, that carpet dealers or retail floor covering establishments cannot purchase the carpeting or floor coverings at the same prices or from the same sources which are available to respondents.

3. By and through the use of the words "Instant Credit" and "Easy Financing," and other words of similar import and meaning not set out specifically herein, purchasers of their products are granted easy

credit terms, without regard to their financial status or ability to pay, by financial institutions with which respondents deal.

PAR. 6. In truth and in fact:

1. Respondents' merchandise is not being offered for sale at special or reduced prices. To the contrary, the respondents' regular selling price and their so-called advertised "sale" prices are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price.

2. Carpet dealers or retail floor covering establishments can purchase carpeting or floor coverings at the same prices or from the same sources which are available to respondents.

3. Purchasers of respondents' products are not granted easy credit terms, without regard to their financial status or ability to pay, by financial institutions with which respondents deal.

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

PAR. 7. In the course and conduct of their aforesaid 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 and distribution of rugs, carpeting, floor coverings and services of the same general kind and nature as those sold by respondents.

PAR 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, has had, and now has, 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, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Para-

graphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including carpeting and floor coverings and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

PAR. 12. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 13. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised by means of radio broadcasts transmitted by radio stations WPGC, WWDC, WEEL, and WASH, located in the States of Maryland, Virginia and in the District of Columbia having sufficient power to carry such broadcasts across state lines, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Kodel," and the true generic name of the fibers contained in such carpeting was not set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, re-

spondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor coverings and not ot the backings, fillings or paddings, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the rules and regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations.

PAR. 15. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under 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 Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act, and the Textile Fiber Products Identification 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 afore-

said 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 Acts, 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 thirty (30) 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 Classic Carpet, Inc., trading and doing business as Carpeteria, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 9542 Arlington Boulevard, Fairfax, Virginia.

Respondents Michael J. Lightman and William R. Lightman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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 Classic Carpet Center, Inc., a corporation, trading and doing business as Carpeteria, or under any other trade name or names, its successors and assigns, and its officers, and Michael J. Lightman and William R. Lightman, individually, and as officers of said corporation, and respondents' 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 of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein unless the price of such merchandise, being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise or services in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise or services at the at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise or services, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise or services of like grade and quality.

3. Advertising or otherwise representing a compared value price for carpet remnants or rugs (a) unless the carpet remnants or

rugs being advertised are of the same grade and quality as the carpets with which such advertised prices are compared; and (b) without disclosing in immediate conjunction therewith that the carpet remnants or rugs are usually sold for less than wall-to-wall prices, and that the compared value is based on the wall-to-wall price of carpeting of the same grade and quality.

4. Representing, directly or by implication, orally or in writing, that purchasers of respondents' merchandise will save any stated dollar or percentage amount without fully and conspicuously disclosing, in immediate conjunction therewith, the basis for such savings representations.

5. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs One, Two, and Four of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

6. Representing, directly or by implication, orally or in writing, that carpet dealers or other floor coverings establishments cannot purchase carpets, floor coverings or any other merchandise at the same prices or from the same sources which are available to respondents.

7. Representing, directly or by implication, orally or in writing, that purchasers of respondents' products are granted easy or assured credit terms by financial institutions with which respondents deal; or misrepresenting, in any manner, the amount, type, extent or any other facet of the credit terms respondents arrange or may arrange for their purchasers.

II

It is further ordered, That respondents Classic Carpet Center, Inc., a corporation, trading and doing buisness as Carpeteria, or under any other trade name or names, its successors and assigns, and its officers, and Michael J. Lightman and William R. Lightman, individually, and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or

causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Falsely and deceptively advertising textile fiber products by:

(a) Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

(b) Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure related only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

(c) Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

(d) Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisment, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondents 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 this order.

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

It is further ordered, That respondents deliver a copy of this order to all present and future personnel of respondents engaged in the sale, or the offering for sale, of any product, in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That each of the individual respondents 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.

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.

IN THE MATTER OF

SPERRY & HUTCHINSON COMPANY

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

*Docket 8671. Complaint, Nov. 15, 1965—Order, Sept. 18, 1973.**

Consent order requiring the nation's largest trading stamp redemption firm, based in New York City to cease combining or conspiring to prevent redemption of trading stamps or the operation of a trading stamp exchange. Respondent is further required to give $2 in cash per book of 1200 green stamps to all customers who choose to redeem their stamps for cash. S&H is further obligated to redeem as few as 300 stamps for a cash value of $.50 and to inform consumers of these new rights by prominent notices in S&H stamp saver books and redemption centers; and required to cancel all injunctions obtained against trading stamp exchanges in the last 12 years.

Appearances

For the Commission: *Sidney A. Steinitz* and *Morton Needleman.*

For the respondent: *Morrison, Clapp, Abrams & Haddock*, Washington, D.C. and *Casey, Lane & Mittendorf*, New York, New York.

DISSENTING STATEMENT

BY JONES, *Commissioner:*

The Commission has accepted a consent order in this case which in my judgment is inadequate and contrary to the interests of consumers who are affected by the respondent's trading stamp practices challenged in the complaint.

The central issue in this case, which the Supreme Court directed the Commission to resolve, concerned the rationale relied upon by the Commission for its findings respecting the illegality of S&H's activities designed to prevent the redemption or exchange of S&H stamps by trading stamp exchanges or retailers not permitted to carry S&H stamps.[1]

*See 73 F.T.C. 1099, and 82 F.T.C. 388, 390.

[1] In its opinion remanding this case to the Commission and reversing the Circuit Court's dismissal of this count, the Supreme Court held that while the Commission had ample power to eliminate unfair acts and practices, it was not able to sustain the Commission's findings and order relating to Count III of the complaint because the Commission's opinion lacked any rationale to support its order provisions based on "the Commission's assessment of particular competitive practices or considerations of consumer interests independent of possible or actual effects of competition." The Supreme Court directed the remand of this case to the Commission to enable the Commission to articulate a rationale for its

In its original opinion in this case, the Commission took the position that the free exchange and redemption of trading stamps are important both to consumers and to competing retailers and that respondent's efforts to suppress the free exchange and redemption of stamps lessens consumers' freedom of choice. The Commission's original order, therefore, directed S&H to cease and desist from impeding the free transferability of trading stamps and from attempting in any way to suppress the free and open redemption or exchange of stamps by retailers or stamp exchanges.

The proferred consent order contains no such prohibitions. Indeed it seems to condone all of S&H's anti-stamp exchange and redemption activities by not prohibiting future injunction suits by S&H against stamp exchanges and retailers and by expressly permitting S&H to place a notice of its legal position respecting its stamp ownership in its stamp books, thus apparently accepting S&H's legal position respecting its continued ownership of its stamps and the consequent illegality of consumer trafficking in their stamps.

The Commission's rationale for accepting the order is that under it consumers will now receive a right to a cash redemption from S&H for their S&H stamps in the amount of $2 per book.

At the present time, 20 states already require trading stamps that cash options be provided for and in at least seven of these states $2 is the going rate. Thus essentially this consent order does no more than simply require respondents to do in all states what it is presently required to do in 20 states with the slight additional plus that under the consent order the cash redemption value of a book of stamps will not be fixed at $2 instead of fluctuating between $1.20 and $2 as it has in the past, depending on the competition among stamp redemption or exchange firms.[2]

My central objection to this settlement order is that in my judgment it fails to extricate consumers from what I believe are the essentially unfair features of trading stamp merchandising. Moreover, it provides consumers at best with only partial relief against condemned S&H

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order based on the facts surrounding the challenged transactions which might amount to the unfairness which the Supreme Court held would properly constitute a violation of law under Section 5 of the Federal Trade Commission Act. The Commission's Order to Show Cause sought the guidance of the parties as to the facts and theories of law applicable to determine whether the respondent's activities were unfair within the meaning of the Supreme Court's holding respecting the Commission's jurisdiction to eliminate unfair acts and practices.

[2] It should also be noted that while cash redemption is fixed at the estimated value of the premium merchandise which these stamps could be exchanged for, there is no evidence that this value bears any relationship to the difference in retail prices which consumers may be paying the stamp-dispensing retailer as a result of their use of trading stamps.

practices which is in fact already available in many states and which experience suggests has not been widely made use of by consumers where it has been available. The consent settlement is premised on a view that the only possible—or significant—area of unfairness which trading stamps pose to consumers lies in their lack of an option to redeem stamps for cash in lieu of merchandise. It disregards other potential areas of unfairness flowing from respondent's trading stamp merchandising practices insofar as they deprive consumers of an opportunity to redeem or exchange S&H stamps for other stamps or of an opportunity to choose redemption offers from retailers or stamp exchanges as well as from S&H or coerce consumers in the first instance to deal with retailers selected by S&H in order to collect S&H stamps or to accept trading stamps at all when in fact they might prefer lower retail prices.[3]

A second major objection I have to this order is its failure to take into consideration in any way the disadvantages which non-favored retailers have vis-a-vis their S&H stamp dispensing competitors. The settlement contains a built-in leverage effectively forcing consumers to continue to collect S&H stamps in order to obtain the proffered case redemption right since consumers must buy a minimum of $30 worth of merchandise before they can amass the minimum 300 stamps which are required in order to make the cash redemption right operative. This consent order not only fails to take into account the possible unfairness of S&H practices to retailers not permitted to handle S&H stamps but the order virtually ensures that they will continue to suffer competitive disadvantages since their potential customers practically speaking still remain tied to those of their competitors who are permitted to dispense S&H stamps. However involuntary a consumer's stamp collecting may be, this order virtually ensures that consumers will continue to have a practical need to deal with these favored retailers in order to amass the minimum number of stamps required to get the cash redemption.

Finally, I object to this settlement because it preserves in tact—and perhaps even adds the Federal Trade Commission stamp of approval to—respondent's claims respecting its proprietary relationship to these stamps. Respondent is expressly permitted by the order to tell consumers in effect that they cannot legally deal with stamp

[3] While these possible effects of S&H trading stamp practices may not be borne out by the record or be within the Supreme Court's definition of unfairness, nevertheless, acceptance of this consent order effectively prevents the Commission from exploring these issues on the basis of the briefs and arguments of the parties as was the original intent of its Order to Show Cause.

exchanges. Moreover, respondent is expressly not prohibited from continuing in the future to try and enjoin stamp exchanges from engaging in business. Indeed, it could be said that with its required $2 cash redemption, the order almost precludes competition between the exchanger and S&H and thus speeds the demise of the stamp exchanges rather than leaving their ultimate value to the determination of the marketplace.

Thus in my judgment this settlement accomplishes virtually nothing for the consumer. It accepts the basic unfairness of forcing trading stamps on consumers and gives them simply an option of getting cash instead of merchandise for these stamps. It does nothing about what I regard as the basic unfairness of respondent's trading stamp practices to non-favored retailers. Finally, it leaves trading stamp exchanges at the continued mercy of S&H and provides them with no relief from S&H's efforts to put them out of business.

For all of these reasons, I dissent to this consent settlement.

Decision and Order Relating to Count III of the Complaint

The Commission issued a three-count complaint in this matter on November 15, 1965, charging respondent, the Sperry & Hutchinson Company, with violation of Section 5 of the Federal Trade Commission Act. After a full hearing on the record, the Commission entered a cease and desist order on June 26, 1968 [73 F.T.C. 1099] covering all three counts. Respondent appealed from the Commission's decision to the United States Court of Appeals for the Fifth Circuit seeking review of the issues relating to Count III only. No appeal was taken from the Commission's order relating to Counts I and II, and a final order respecting Counts I and II was entered on February 16, 1973 [82 F.T.C. 388]. Nothing contained in the consent order herein respecting Count III is intended to supersede or in any way affect the final order entered under Counts I and II.

After the Court of Appeals for the Fifth Circuit set aside the Commission's June 26, 1968 [432 F. 2d 146, 8 S&D 1259] order relating to Count III, the Commission appealed to the Supreme Court which reversed the Fifth Circuit and ordered the case remanded to the Commission for such further proceedings as may be appropriate [405 US 233].

The Commission having now duly determined upon motion submitted by complaint counsel and respondent that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement

by the entry of a consent order relating to Count III of the complaint herein; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission by respondent 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 respondent that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having been placed on the public record for a period of thirty (30) 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(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order relating to Count III of the complaint:

1. The Sperry & Hutchinson Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 330 Madison Avenue, 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

I. *It is ordered*, That respondent, the Sperry & Hutchinson Company, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the issuing, distribution, sale, or the redemption of trading stamps in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall within sixty (60) days of the effective date of this order:

(a) Offer to redeem in cash at any of its redemption centers all of its trading stamps presently outstanding or hereafter issued which are duly presented for redemption by bona fide holders, *provided* a minimum of 300 stamps is presented for redemption. The holder who elects redemption in cash shall be entitled to receive an amount of money which shall not be less than the sum of (1) the merchandise cost incurred by respondent in redeeming a like number of stamps presented for merchandise redemption and (2) 32 percent of such merchandise cost. The term "merchandise

cost incurred by respondent," for the purposes of this order, shall be determined on the basis of the average merchandise cost incurred by respondent, according to its books and records, in redeeming 1200 stamps for merchandise in each of the five fiscal years preceding the fiscal year in which the stamps are presented. Respondent's initial cash redemption value shall be set at $2 per 1200 stamps pursuant to the above described formula, and said value shall not be changed until such time as the merchandise cost plus 32 percent, as determined pursuant to the above formula, is at least 20 cents above or below the then current cash redemption value. Respondent's cash redemption value shall thereafter be further adjusted by applying the above procedures;

(b) Include in every stamp saver book to be printed by respondent after the date of this order the following notice which is to be printed in no less than 14 point type at the top of the inside cover of said book: "A minimum of 300 stamps may be redeemed at the option of the holder for cash instead of merchandise. The cash value of 300 stamps is ———— and the cash value of a completed book of stamps (1200 stamps) is ————."; and

(c) Conspicuously display in every redemption center the notice set forth in (b) above.

II. *It is further ordered*, That respondent shall cease and desist from:

1. Combining or conspiring with, or soliciting concerted action from, any other trading stamp company to prevent redemption of trading stamps or the operation of a trading stamp exchange.

2. Communicating in any way with any other trading stamp company or acting in any way in response to any communication from any trading stamp company with respect to preventing the operation of any trading stamp exchange or the free and open redemption or exchange of trading stamps by any person.

III. *It is further ordered*, That respondent:

(a) Within sixty (60) days after the effective date of this order make an application to vacate every injunction which has been issued in any court within the twelve years preceding the effective date of this order against the redemption, exchange, sale or other use of respondent's trading stamps by any commercial trading stamp exchange, without prejudice to respondent's right to bring new actions in the same courts (and in other courts) to enjoin the redemption, exchange, sale or other use of S & H trading stamps by such commercial trading stamp exchanges in the

future on the basis of facts occurring after the aforementioned injunctions have been vacated, and without prejudice to the right of the Federal Trade Commission to take any action it considers appropriate with regard to any future actions brought by respondent against commercial trading stamp exchanges; and respondent shall within such sixty-day period notify every such commercial trading stamp exchange of said application to vacate;

(b) Notify the Federal Trade Commission in writing of any such action it may institute in the future against any commercial trading stamp exchange and such notification shall be mailed to the Commission no later than the date on which such action is commenced.

It is further ordered, That respondent, within sixty (60) days after the effective date of this order, notify in writing all of its redemption employees of the provisions of this order.

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, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That 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.

It is agreed that for the purposes of this order, the term "commercial trading stamp exchange" as used herein means any person, firm, partnership, corporation or other business entity, other than a trading stamp company, which is engaged in the business of exchanging, redeeming, selling or otherwise dealing in trading stamps and where such business is conducted as a separate and independent enterprise which is not ancillary to, or does not result in a direct benefit to, any retailing or other business conducted by such person, firm, partnership, corporation or other business entity.

Commissioner Jones dissenting.

IN THE MATTER OF

WARNER-LAMBERT COMPANY

Docket 8891. Interlocutory Order, Sept. 18, 1973.

Order denying appeals of complaint counsel from rulings of the administrative law judge issuing subpoenas *duces tecum* under Sections 3.36 and 3.34(b) of the Commission's rules and returning matter to judge for rescheduling of return dates of subpoenas. Commissioner Dixon not concurring.

Appearances

For the Commission: *Edward F. Downs*, *Wallace S. Snyder*, *William S. Busker* and *Patrick E. Power, Jr.*

For the respondent: *Mudge, Rose, Guthrie & Alexander*, New York, New York and *Bergson, Borkland, Margolis & Adler*, Washington, D.C.

ORDER DENYING COMPLAINT COUNSEL'S APPEAL FROM DISCOVERY RULINGS OF ADMINISTRATIVE LAW JUDGE

This matter is before the Commission upon appeals by complaint counsel seeking reversal of two rulings made by the administrative law judge during the course of a pretrial hearing conference in this matter held on March 20, 1973. The first ruling directed issuance of a subpoena *duces tecum* to the Secretary of the Commission under Section 3.36 of the Commission's Rules of Practice directing production of certain reports, comments and analyses prepared by Dr. Patricia Charache and Dr. Alan Gittelson of Johns Hopkins University. The second ruling directed issuance of subpoenas *duces tecum* to Drs. Charache and Gittelson under Section 3.34(b) of the Commission's rules directing production of essentially the same material called for by the Section 3.36 subpoena issued upon the Secretary. By orders of April 18, 1973, the Commission stayed the return dates of the three subpoenas pending disposition of the appeals.

The facts giving rise to the appeals are undisputed. Briefly, during the investigation prior to the issuance of complaint, respondent Warner-Lambert submitted to Commission staff certain tests conducted by the company which allegedly supported the company's claims as to the effectiveness of Listerine Antiseptic as a cold remedy. The tests were subsequently turned over to Drs. Charache and Gittelson, who had been hired as consultants by Commission staff to assist in the preparation of the matter for complaint. The doctors analyzed

the tests and submitted reports thereon to Commission staff, which reports, according to complaint counsel, are critical of respondent's tests. It is these reports and any other related comments or analyses of the two doctors that respondent sought, first from the Commission's files by motion filed pursuant to Section 3.36 of the Commission's Rules of Practice, and secondly, directly from the doctors themselves by motion filed under Section 3.34(b) of the rules.

Respondent does not seriously contend that what it seeks by the subpoenas does not fall within the scope of complaint counsel's work product for which a strong showing justifying disclosure must be made. Respondent argues, rather, that it made the required showing to the administrative law judge, that the judge was satisfied with that showing and that his rulings ought not be disturbed in the absence of a clear abuse of his discretion.[1]

We need not decide whether the administrative law judge erred in holding that the reports must be produced. *Compare* Fed. R. Civ. P. 26(b)(1) and (4)(A), Advisory Committee Notes on 1970 Amendment, 28 U.S.C.A. at 160–161 (1972). Administrative law judges have discretion with respect to the conduct of adjudicative proceedings. This discretion will not be disturbed except for its clear abuse; and considering all of the circumstances, we find no such clear abuse here. Accordingly,

It is ordered, That the appeal of complaint counsel, filed March 27, 1973, from a ruling by the administrative law judge issuing a subpoena *duces tecum* under Section 3.36 of the Commission's Rules of Practice be, and it hereby is, denied.

It is further ordered, That the appeal of complaint counsel, filed April 12, 1973, from a ruling by the administrative law judge issuing a subpoena *duces tecum* under Section 3.34(b) of the Commission's Rules of Practice be, and it hereby is, denied.

It is further ordered, That the matter be returned to the administrative law judge for rescheduling of return dates of the aforesaid subpoenas.

Commissioner Dixon not concurring.

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[1] Response to Complaint Counsel's Appeals Under Section 3.36, filed April 6, 1973, at pp. 3–9; Response to Complaint Counsel's Application for Review Under Section 3.23, filed April 25, 1973, at pp. 2–9.

IN THE MATTER OF

AMERADA HESS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT AND THE CLAYTON ACT, SEC. 7

Docket C-2456. Complaint, Sept. 18, 1973—Decision, Sept. 18, 1973.

Consent order requiring a New York City based refiner-transporter of petroleum products, among other things to divest itself entirely of Clarco Pipe Line Co., a transporter of crude oil; prohibiting the acquired company Clarco from refusing to transport crude oil; and restraining a Burlington, Vt., manufacturer of asphalt, with operations in the State of Mississippi, from acquiring any asphalt refineries shipping asphalt in or into Mississippi. The order further prohibits two corporations and two individuals, in perpetuity, from owning or controlling any equity or debt interest in Clarco except for those already existing.

Appearances

For the Commission: *Harold G. Munter* and *Hugh F. Bangasser*,
For the respondents: *Briscoe R. Smith*, of *Milbank, Tweed, Hadley & McCloy*, New York, New York

COMPLAINT

The Federal Trade Commission, having reason to believe that Amerada Hess Corporation has acquired a controlling stock interest in Clarco Pipe Line Company, a Mississippi corporation, and that it has purchased the Black Creek Refinery at Purvis, Mississippi, including pipeline and terminal facilities, from Gulf Oil Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C., Section 18), and/or in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C., Section 45); that through its officers and directors and others has unreasonably restrained competition in the production and sale of crude oil to, and asphalt from, refineries located in the State of Mississippi; and that through its officers and directors and others it has attempted to monopolize and has monopolized the transportation of crude oil in eastern Mississippi; and that it has acquired the power to exercise total price control over crude oil produced in eastern Mississippi; hereby issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C., Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C., Section 45(b)), stating its charges as follows:

I

DEFINITIONS

PARAGRAPH 1. As used herein:

(a) The term "asphalt refinery" means any refinery which produces asphalt as its principal product in terms of unit or dollar volume;

(b) The term "Eastern Mississippi" refers to the area covered by Jones, Jasper, Clarke, Wayne, Smith, and Covington Counties, or counties or portions thereof situated directly south thereof which are located north of the East-West Trans-State pipeline owned by Amerada Hess Corporation;

(c) The term "pipeline" refers to pipelines transporting crude oil.

II

RESPONDENTS

A. *Amerada Hess Corporation*

PAR. 2. Amerada Hess Corporation (Amerada Hess), a respondent herein, is a Delaware corporation incorporated on February 7, 1920. It was the surviving corporation in the merger, on June 20, 1969, of Hess Oil & Chemical Corporation into Amerada Petroleum Corporation, with principal executive offices at 51 West 51st Street, New York, N.Y.

PAR. 3. Amerada Hess is engaged in the exploration for and the production, purchase, gathering, transportation, refining and marketing of petroleum products and petrochemicals; and the terminaling of petroleum. Amerada Hess Corporation's exploration and production operations are conducted primarily in the United States (including the Gulf of Mexico and Alaska), Canada, Libya and the North Sea. Its refineries are located in the United States, Virgin Islands, New Jersey and Mississippi, and its marketing of refined petroleum products is conducted primarily in the Northeastern and Southeastern regions of the United States.

PAR. 4. Total sales of Amerada Hess for the year 1970 were $1,086,290,166; its total assets were $1,116,175,637. Amerada Hess was the 95th largest industrial corporation in the United States in assets, and 111th in sales in 1970.

PAR. 5. Prior to the aforementioned acquisitions, and to the present time, Amerada Hess has owned and operated a crude oil pipeline system in Mississippi which serves, among other areas, parts of Clarke,

Jasper, Jones, and Wayne Counties in Mississippi. Oil entering this pipeline is transported, in part, to states other than Mississippi.

PAR. 6. At all times relevant herein, Amerada Hess purchased, refined, transported, and sold crude oil and products made therefrom in interstate commerce throughout the Northeastern and Southeastern regions of the United States; it was and is engaged in commerce as defined in the Clayton Act and the Federal Trade Commission Act.

B. *Clarco Pipe Line Company.*

PAR. 7. Clarco Pipe Line Company (Clarco), is a Mississippi corporation which was incorporated on April 17, 1967, with offices in Room 1001, First National Bank Building, Jackson, Mississippi. It began transmission of crude oil by means of a pipeline system serving various areas of Clarke, Jasper, Jones, and Wayne Counties in Mississippi in July 1968, and operates a gas recycling plant in Jones County, Mississippi, which produces natural gasoline, butane and propane gas. Amerada Hess acquired a 35 percent interest in Clarco's outstanding stock on January 15, 1971. At the same time, Amerada Hess acquired the right to vote a 70 percent stock interest in Clarco. On August 31, 1971, Amerada Hess purchased the remaining 30 percent of the stock of Clarco Pipe Line Company from Ergon, Inc. and Miller Oil Purchasing Company.

PAR. 8. All crude oil which entered the Clarco pipeline system in Mississippi, from the date of its construction up to and including January 15, 1971, was transported to and entered the Humble Oil & Refining Company pipeline at Soso, Mississippi, for transportation to Humble's refinery at Baton Rouge, Louisiana.

PAR. 9. At all times relevant herein, Clarco transported crude oil in interstate commerce in the State of Mississippi; it was and is engaged in commerce as defined in the Clayton Act and the Federal Trade Commission Act.

C. *VGS Corporation (Vermont Gas Systems, Inc.)*

PAR. 10. VGS Corporation (VGS) (formerly Vermont Gas Systems, Inc.), is a Vermont corporation with corporate offices located at 31 Swift Street, Burlington, Vermont. Among other enterprises, VGS manufactures asphalt under the trade style Southland Oil Corporation.

PAR. 11. VGS owns and operates two refineries and leases and operates one other in the State of Mississippi. Asphalt is the principal product of these three refineries which are the only asphalt refineries in Mississippi using Mississippi crude oil.

PAR. 12. The products refined from crude oil by VGS in various loca-

tions in the State of Mississippi are sold in Mississippi and adjoining states.

PAR. 13. VGS is a purchaser of crude oil; it possesses a crude oil import quota which it has exchanged with Amerada Hess.

PAR. 14. At all times relevant herein, VGS was producing and selling asphalt and other products refined from crude oil in interstate commerce in Mississippi and surrounding states; it was and is engaged in commerce as defined by the Clayton Act and Federal Trade Commission Act.

D. *Robert M. Hearin*

PAR. 15. Robert M. Hearin is chairman of the board and chief executive officer of the First National Bank of Jackson, Jackson, Mississippi, and a director of the Amerada Hess Corporation. He was a member of the board of directors of Hess Oil and Chemical Corporation from 1962 until its merger into Amerada Petroleum Corporation on June 20, 1969. Robert M. Hearin, Annie Laurie Hearin and Robert M. Hearin, Jr. were beneficial owners of 58.666 percent of the stock in Southland Oil Company between August 1, 1965, and January 1, 1968. Southland Oil Company was merged into Vermont Gas Systems, Inc. in January 1968. Mr. Hearin and his immediate family are the owners of 46 percent of the shares of VGS Corporation; Mr. Hearin is a director of that corporation. VGS exchanged foreign crude oil with Hess Oil & Chemical Corporation, receiving the latter's domestic crude; in addition, VGS sold petroleum products to Amerada Hess and Amerada Hess sold crude oil to VGS.

E. *Leon Hess*

PAR. 16. Leon Hess is the major stockholder, a director, and chairman of the executive committee of Amerada Hess Corporation. He is beneficial owner of 3 percent of the shares of stock in VGS Corporation.

III

The following companies and individuals are not named as respondents herein, but are described because of their relationship to the transactions complained of herein.

A. *Gulf Oil Corporation*

PAR. 17. Gulf Oil Corporation (Gulf), a Pennsylvania corporation with principal offices in the Gulf Building, Pittsburgh, Pennsylvania, owned the Black Creek Refinery at Purvis, Mississippi, with a capacity of 28,500 barrels a day until its sale in April, 1971, for cash to Amerada

Hess. It has, at all times relevant herein, been engaged in interstate commerce.

B. *A. F. Chisholm and J. E. Stack, Jr.*

PAR. 18. A. F. Chisholm, P.O. Box 2766, Laurel, Mississippi, owned or controlled 35 percent of the capital stock of Clarco Pipe Line Company from the time of its organization, as noted:

A. F. Chisholm 21.5 percent.
Cynthia W. Chisholm 4.5 percent.
Margaret A. Chisholm 4.5 percent.
Jean C. Lindsay 4.5 percent.

He is one of the founders of Clarco Pipe Line Company; with J. E. Stack, Jr., he is a principal of the Brandon Company engaged in the exploration for and drilling of oil in Mississippi, Florida, and Alabama.

PAR. 19. J. E. Stack, Jr., P.O. Box 1023, Meridian; Mississippi, owned 35 percent of the capital stock of Clarco Pipe Line Company. He is one of the founders of Clarco and is associated with A. F. Chisholm, through the Brandon Company, in the exploration for and production of crude oil in Mississippi and nearby states.

PAR. 20. Prior to December 31, 1970, Messrs. Chisholm and Stack were vice president and secretary-treasurer, respectively, and directors of Clarco Pipe Line Company. Since December 31, 1970, they have been president and secretary-treasurer, respectively, of Clarco.

C. *Ergon, Inc. and Miller Oil Purchasing Company*

PAR. 21. Ergon, Inc., a Mississippi corporation, is the parent company of Miller Oil Purchasing Company (MOPCO), a Mississippi corporation, with offices at 107 West Pearl Street, Jackson, Mississippi. Miller Oil Purchasing Company is wholly owned by Ergon, Inc.

PAR. 22. Prior to August 31, 1971, Ergon, Inc. and MOPCO, each owned 15 percent of the capital stock of Clarco Pipe Line Company.

PAR. 23. Miller Oil Purchasing Company was, at all times relevant herein, engaged in the purchase, transportation and sale of crude oil in Mississippi. It was, until August 31, 1971, the sole customer of Clarco Pipe Line Company during the entire period of Clarco's operation.

PAR. 24. Amerada Hess purchased all of the capital stock of Clarco Pipe Line Company owned by Ergon, Inc. and MOPCO for $900,000 cash.

IV

TRADE AND COMMERCE

PAR. 25. Mississippi is a major crude oil producing state. Oil produced therein is transported to points in Louisiana, Alabama and to interstate pipelines; four refineries which depend upon Mississippi-produced crude are located in the state. One other, located at Pascagoula, utilizes offshore crude from Louisiana as its prime raw material.

PAR. 26. The eastern portion of the State of Mississippi, particularly Jasper, Clarke, Jones, Wayne, Smith and Covington Counties, has been growing in importance as an oil producing area during the past ten years. At present, production of crude in these counties approximates 90,000 barrels a day, with an average wellhead price in excess of $3 a barrel. Value of this production is in excess of $88,000,000 annually.

PAR. 27. Immediately prior to the organization of the Clarco Pipe Line Company, only two pipeline systems were available to transport oil from eastern Mississippi to various markets in Mississippi, Alabama, Louisiana, and other points in the United States.

PAR. 28. One of these two pipeline systems was, at all times relevant herein, owned and controlled by Hunt Oil Company and was and is used solely for the transportation by Hunt of crude from eastern Mississippi to the Hunt refinery at Tuscaloosa, Alabama. This refinery has a capacity of about 9,000 barrels a day.

PAR. 29. The remaining system was owned by Amerada Hess. The nucleus of the system was acquired by Hess Pipeline Company by purchase from Humble Pipeline Company on April 1, 1963. As constituted immediately before the acquisition of control of Clarco, this system connected with the Humble Pipeline at Soso, Mississippi, and extended into various oil fields in Smith, Jasper, Clarke, Wayne and Jones Counties in Mississippi. In addition to the Humble connection at Soso, the system connected at Eucutta Station in Wayne County with an Amerada Hess pipeline running south to the Purvis refinery of Gulf Oil Company and from Lumberton Station, south of Purvis, where a connection existed with an Amerada Hess pipeline running east-southeast from Southdale, Mississippi, to the Amerada Hess terminal at Mobile, Alabama. In 1970, the Amerada Hess Pipeline system transported in excess of 27.7 million barrels of oil.

PAR. 30. Clarco was incorporated on April 17, 1967, to compete with the Amerada Hess system in the transportation of eastern Mis-

sissippi crude to various markets. The original line ran from Humble's Soso terminal to the Quitman oil field in Clarke County and, more specifically, to those wells controlled by Messrs. Chisholm and Stack operating under the title of the Brandon Company.

PAR. 31. The Clarco line paralleled the Amerada Hess line; all extensions of the original Clarco line were made into areas within the boundaries of the area served by Amerada Hess, or close enough to the Amerada Hess line to have warranted an extension thereof. By December 31, 1970, both lines had extended into the Pachuta Creek, Nancy, Wausau and Pool Creek oil fields, and were in direct competition with each other for the transportation of oil from other fields in Mississippi.

PAR. 32. Miller Oil Purchasing Company (MOPCO), was the sole user of the Clarco line. It competed for the purchase of oil at wellhead from producers, in direct competition with Amerada Hess; and transported it via Clarco to Humble's Soso connection. Humble was MOPCO's only customer. Except for the comparatively minimal purchases by Hunt (see Paragraph Twenty-Eight), Amerada Hess had no significant competition for the purchase of eastern Mississippi crude prior to the construction of Clarco. MOPCO was the purchaser of Brandon Company oil and one of the original organizers of Clarco.

PAR. 33. On or about April 16, 1971, Amerada Hess completed the purchase of the Black Creek Refinery, located at Purvis, Mississippi, including pipeline and terminal facilities, from Gulf Oil Corporation. The refinery, which has a 28,500 barrel a day refining capacity, is to be expanded to 100,000 barrels a day. It is the only refinery in Mississippi using Mississippi crude which is not primarily an asphalt refinery.

PAR. 34. The Amerada Hess pipeline system previously extended to Purvis from the area served by Clarco.

PAR. 35. On August 31, 1971, Amerada Hess purchased 30 percent of the capital stock of Clarco from Ergon and MOPCO, thus gaining 100 percent voting control of the Clarco pipeline.

PAR. 36. It is possible to reverse the flow of the Clarco pipeline from its present westerly direction to a southerly direction to feed the additional anticipated requirement of the Purvis refinery. In such an event, Humble will be unable to obtain eastern Mississippi crude oil by pipeline; and because of excessive trucking costs, eastern Mississippi producers would be precluded from selling to Humble. Except for the minor Hunt oil purchases, eastern Mississippi oil producers would have no purchaser readily available other than Amerada Hess.

PAR. 37. Prices paid to producers of crude in eastern Mississippi increased immediately upon announcement and construction of the Clarco line.

PAR. 38. Prior to August 1, 1965, three asphalt refineries existed in the State of Mississippi, located at points near Yazoo City, Laurel and Lumberton. The Yazoo and Laurel refineries were owned by the Southland Company, a partnership. The Lumberton plant was owned by Mississippi Federated Cooperative and was operated as Lamar Refining Company.

PAR. 39. The assets of the Southland Company were purchased in August 1965, by Southland Oil Company, a corporation, for approximately $7,000,000. Leon Hess and Robert M. Hearin posted a total of $2,200,000 to secure the financing of the purchase.

PAR. 40. In January 1968, Southland Oil Company was acquired by VGS Corporation (Vermont Gas Systems, Inc.).

PAR. 41. Robert M. Hearin and members of his family are the largest holders of record of VGS stock (76,172 shares of a total of 161,409). Leon Hess is the beneficial owner of 2,276 shares of VGS. Prior to VGS' acquisition of Southland, Leon Hess and Robert M. Hearin were joint owners of a convertible debenture of VGS (from which Hess has derived his present stock interest in VGS).

PAR. 42. Amerada Hess is also the principal supplier of crude oil to Southland's asphalt refineries.

PAR. 43. In June 1968, VGS leased the asphalt refinery at Lumberton from Mississippi Federated Cooperative. VGS now owns or controls all asphalt refineries in Mississippi.

PAR. 44. Total sales of asphalt by VGS in 1970 were $6,319,033. Sales for the first six months of 1971 were $3,759,108.

V

VIOLATIONS CHARGED

Count I

PAR. 45. Respondents Amerada Hess Corporation, Clarco Pipe Line Company, Leon Hess, Robert M. Hearin, and VGS Corporation are hereby charged with a violation of Section 5 of the Federal Trade Commission Act in that they have, by a continuing course of conduct, tended to monopolize the purchase, transportation and refining of crude oil produced in the State of Mississippi and specific portions thereof, as follows:

(a) By purchasing Humble Pipeline Company's pipeline and gathering system April 1, 1963, Amerada Hess eliminated Humble as a direct purchaser of oil in eastern Mississippi;

(b) By January, 1967, Amerada Hess had acquired all the crude oil pipelines serving eastern Mississippi east of Soso with the exception of the Hunt Oil Co. pipeline and small lines serving the Black Creek Refinery and small asphalt refineries;

(c) With the assistance of financing collateralized by Robert M. Hearin and Leon Hess, the Southland Company, owner of two of three Mississippi asphalt refineries, was absorbed by Southland Oil Company;

(d) As of January 1, 1968, Vermont Gas Systems, Inc. (VGS), of which Hearin and Hess were joint holders of convertible debentures, acquired Southland Oil Company; Hearin remains the largest stockholder of VGS; Hearin and Hess jointly own about 49 percent of VGS stock;

(e) As of August 1968, VGS acquired an eight-year lease on the only remaining asphalt refinery in Mississippi;

(f) Clarco Pipe Line Company came into being in April 1967 as a competitor to Amerada Hess' pipeline described in subsection (a) above;

(g) On or about October 2, 1970, as a direct result of personal action taken by Robert M. Hearin and Leon Hess, Amerada Hess and Messrs. Chisholm and Stack entered an agreement providing Amerada Hess with an option to purchase control of Clarco Pipe Line Company;

(h) On January 15, 1971, Amerada Hess purchased 70 percent voting control and 35 percent of the stock of Clarco from A. F. Chisholm and J. E. Stack, Jr., with an option to purchase the remaining 35 percent controlled by them;

(i) On April 16, 1971, Amerada Hess had completed the purchase of Gulf Oil Corporation's Black Creek Refinery at Purvis, Mississippi, the only non-asphalt refinery in Mississippi using Mississippi crude oil;

(j) On August 31, 1971, Amerada Hess purchased the remaining 30 percent interest in Clarco from Ergon, Inc. and Miller Oil Company.

PAR. 46. As a result of the aforementioned continuing course of conduct:

(a) Completion in the transportation of crude oil by pipeline in eastern Mississippi has been substantially eliminated;

(b) Substantial barriers to entry have been raised to potential pipeline builders;

(c) Control of pipelines and direct or indirect control of all refining capacity eliminates, or may eliminate, all effective outlets, other than Amerada Hess, for the sale of crude oil by producers in eastern Mississippi;

(d) Excessive market power in the Mississippi market for asphalt has been obtained;

(e) The power to set non-competitive prices on asphalt produced in Mississippi has been enhanced;

(f) Amerada Hess has acquired the power to set low non-competitive prices on crude oil at wellhead in eastern Mississippi.

The above course of conduct constitutes an unfair method of competition.

Count II

PAR. 47. Respondents Amerada Hess Corporation and Clarco Pipe Line Company are hereby charged with a violation of Section 5 of the Federal Trade Commission Act in that they have attempted to monopolize the purchase and transportation of crude oil produced in eastern Mississippi and to eliminate competition in the transportation of eastern Mississippi crude oil as follows:

(a) Amerada Hess Corporation purchased 70 percent voting control of Clarco Pipe Line Company on January 15, 1971;

(b) On April 15, 1971, Clarco's board of directors, voting Hess controlled stock, eliminated the independent management of Clarco by turning over all management, operating, bookkeeping, and accounting functions of the company to Amerada Hess;

(c) Amerada Hess purchased the 30 percent minority interest in Clarco Pipe Line Company on or about August 31, 1971. Clarco Pipe Line Company is now under the complete control of Amerada Hess;

(d) In contrast to its previous rapid growth, Clarco has not expanded its lines since the assumption of voting control by Amerada Hess.

PAR. 48. As a result of the aforementioned attempt to monopolize and to eliminate competition:

(a) Clarco Pipe Line Company has been eliminated as an independent competitor in eastern Mississippi in the transportation of crude oil;

(b) Amerada Hess owns, controls or manages all crude oil pipe-

lines in eastern Mississippi east of Humble's line at Soso and west of Hunt Oil's line into Alabama;

(c) Amerada Hess has acquired the power to foreclose eastern Mississippi oil producers from any market other than Amerada Hess;

(d) Amerada Hess has acquired the power to prevent any competitive expansion of Clarco into newly discovered or producing oil fields, thereby preventing competition for the purchase or transportation of crude oil in such newly discovered fields.

This attempt to monopolize and to eliminate competition is an unfair method of competition.

Count III

PAR. 49. Respondent Amerada Hess is hereby charged with a violation of Section 7 of the Clayton Act in that, on or about January 15, 1971 and August 31, 1971, it purchased all of the stock of Clarco Pipe Line Company, a Mississippi corporation, and has assumed control and management of all of the business and assets of Clarco Pipe Line Company, thereby substantially lessening competition and tending to create a monopoly in the transportation of crude oil in eastern Mississippi and probably substantially lessening competition and tending to create a monopoly in the purchase and transportation of crude oil produced in the States of Mississippi, Alabama, and Florida or segments thereof.

PAR. 50. The effects of the aforesaid acquisition have been or may be as follows:

(a) Actual and potential competition between Amerada Hess and Clarco in the transportation of crude oil in Mississippi and to other states has been or probably will be eliminated;

(b) Actual and potential competition between Amerada Hess and independent oil purchasers in the purchase of crude oil in the areas served by the Amerada Hess and Clarco pipelines has been, or may be, substantially curtailed;

(c) Amerada Hess has accumulated the power to monopolize the purchase of oil in eastern Mississippi;

(d) Amerada Hess has effectively established a monopoly in the transportation of crude oil by pipeline in eastern Mississippi;

(e) The existence of the Amerada Hess and Clarco pipeline systems under the control of one company heightens the barriers to the entry of new pipeline companies in Mississippi;

(f) Concentration in the transportation of crude oil in eastern Mississippi has been increased from duopoly to monopoly; and

(g) The expansion of the Clarco Pipe Line system as an independent competitive factor into Alabama and Florida has been effectively forestalled, thereby probably substantially lessening competition and tending to create a monopoly in the purchase and transportation of crude oil in those states or segments thereof.

Count IV

PAR. 51. Respondent Amerada Hess is hereby charged with a violation of Section 7 of the Clayton Act in that, on or about April 16, 1971, it purchased the Black Creek Refinery of the Gulf Oil Corporation located at Purvis, Mississippi, thereby probably substantially lessening competition and tending to create a monopoly in (a) the refining of Mississippi crude oil in the State of Mississippi, (b) the purchase of crude oil produced in eastern Mississippi, and (c) the purchase of crude oil produced in Mississippi or adjoining states or segments thereof.

PAR. 52. The effects of the aforementioned acquisition are as follows:

(a) The acquisition and the planned expansion of the refinery will create a demand by Amerada Hess for oil in excess of the entire production of eastern Mississippi;

(b) In connection with the Clarco acquisition, other markets for eastern Mississippi crude oil producers have been, or may be, eliminated;

(c) Concentration of available markets for crude oil in eastern Mississippi and/or Alabama has been, or may be, increased to the point of monopsony by Amerada Hess;

(d) Amerada Hess has acquired a monopoly of crude oil refining capacity in Mississippi which utilizes Mississippi-produced crude.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 7 of the Clayton Act, as amended, and/or Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint

to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Amerada Hess Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 51 West 51st Street, New York, New York.

Respondent Clarco Pipe Line Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at Room 1001, First National Bank Building, Jackson, Mississippi.

Respondent VGS Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Vermont, with its office and principal place of business located at 31 Swift Street, Burlington, Vermont.

Respondent Robert M. Hearin is chairman of the board and chief executive officer of the First National Bank of Jackson, Jackson, Mississippi, and a director of respondents Amerada Hess Corporation and VGS Corporation.

Respondent Leon Hess is the major stockholder, a director, and chairman of the board of directors of respondent Amerada Hess Corporation.

ORDER

For the purposes of this order, the definitions below shall apply:

"Respondent Amerada Hess" refers to Amerada Hess Corporation, a corporation, its subsidiaries, affiliates, successors, and assigns.

"Respondent Clarco" refers to Clarco Pipe Line Company, a corporation, its subsidiaries, affiliates, successors and assigns.

"Respondent VGS" refers to VGS Corporation, a corporation, its subsidiaries, affiliates, successors and assigns.

"Person" means any individual, corporation, partnership, association, firm, or other business or legal entity.

I

It is ordered, That respondent Amerada Hess, its officers, directors, agents, representatives, and employees shall, within twelve (12) months from the date of service upon it of this order, divest absolutely and in good faith, subject to the approval of the Federal Trade Commission, all stock, voting rights, assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, pipelines, equipment, machinery, inventory, and customer lists acquired by respondent Amerada Hess as a result of its acquisition of the stock of respondent Clarco, together with all additions and improvements thereto, of whatever description.

II

It is further ordered, That respondent Amerada Hess shall be restrained, forthwith and for a period ending eighteen (18) months from the date of the divestiture ordered by Paragraph I of this order, from expanding its pipeline system to such existing crude oil production as it obtained from Messrs. Stack and Chisholm; and, further, that any pipelines, equipment, machinery, and inventory which were removed from respondent Clarco's pipeline at the time of, or subsequent to, acquisition by respondent Amerada Hess and utilized on respondent Amerada Hess' pipeline shall be returned to respondent Clarco along with any improvements, additions, replacements and alterations thereto.

III

It is further ordered, That none of the stock, voting rights, assets, properties, rights or privileges described in Paragraph I of this order shall by such divestiture be transferred, directly or indirectly, to any person who has been an officer, director, employee, or agent of respondent Amerada Hess, or has owned or controlled, directly or indirectly, more than one (1) percent of the outstanding shares of respondent Amerada Hess or respondent VGS at any time from the date of the first acquisition by respondent Amerada Hess of respondent Clarco's stock.

IV

It is further ordered, That, pending divestiture, respondent Clarco shall be operated as if a common carrier for the transportation of

crude oil between all existing points of delivery on its lines and Soso, Mississippi, with transportation charges not to exceed those posted by respondent Clarco at the time of its acquisition by respondent Amerada Hess.

V

It is further ordered, That, after divestiture, respondent Clarco shall be prohibited from having as directors, managers, accountants or other managing officials any person having been employed or retained, in any manner, by respondent Amerada Hess or respondent VGS, or who acted as an officer of respondent Clarco at any time from the date of respondent Amerada Hess' first acquisition of respondent Clarco's stock until the time of divestiture, except such persons who were officers of respondent Clarco prior to such acquisition.

VI

It is further ordered, That respondent Clarco shall be prohibited for a period of ten (10) years from the date of service upon it of this order, from refusing directly or indirectly, to transport crude oil for any customer to any destination to which it delivered crude oil for such customer prior to January 1, 1971.

VII

It is further ordered, That respondent VGS, its officers, directors, agents, representatives, and employees shall be restrained, for a period of ten (10) years from the date of service upon it of this order, from acquiring any asphalt refineries shipping asphalt in or into Mississippi; *Provided*, *however*, That nothing in this paragraph shall preclude respondent VGS from exercising options or other rights held by it as of July 6, 1973 with respect to the asphalt refinery at Lumberton, Mississippi leased by it as of the date of service of this order.

VIII

It is further ordered, That respondents Amerada Hess, VGS, Robert M. Hearin, and Leon Hess are prohibited in perpetuity, from owning or controlling in any manner, directly or indirectly, any equity or debt iterest in respondent Clarco, except for debt interests existing at the date of service of this order.

IX

It is further ordered, That, with respect to the divestiture required herein, nothing in this order shall be deemed to prohibit respondent Amerada Hess from accepting consideration which is not entirely cash and from accepting and enforcing a loan, mortgage, deed of trust or other security interest for the purpose of securing to respondent Amerada Hess full payment of the price, with interest received by it in connection with such divestiture; *Provided*, *however*, That should respondent Amerada Hess by enforcement of such security interest, or for any other reason, regain direct or indirect ownership or control of the divested plants, land or equipment, said ownership or control shall be redivested, subject to the provisions of this order, within one (1) year from the date of reacquisition.

X

It is further ordered, That, pending divestiture, respondent Amerada Hess shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of respondent Clarco, which may impair respondent Clarco's present market value, unless such value is restored prior to divestiture.

XI

It is further ordered, That respondents Amerada Hess, Clarco, and VGS shall not acquire, directly or indirectly, through joint ventures or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock or share capital of any person engaged in the transportation and refining of crude oil produced in the States of Mississippi or Alabama, or any of such persons' assets (other than crude oil) which are related to the transportation or refining of crude oil produced in either of such states.

XII

It is further ordered, That respondents shall, within sixty (60) days from the date of service upon them of this order and every sixty (60) days thereafter until the divestiture ordered by Paragraph I hereof is effected, submit to the Federal Trade Commission a detailed written report of their actions, plans and progress in complying with the provisions of this order, and fulfilling its objectives. All compliance reports shall include, among other things that are from time to

time required, a summary of all discussions and negotiations with any person or persons who are potential owners or managers of the assets to be divested, the identity of all such persons, copies of all communications to and from such persons, and all internal memoranda, reports, and recommendations concerning divestiture.

XIII

It is further ordered, That respondents Amerada Hess, Clarco, and VGS shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in said respondents which may affect compliance obligations arising out of this order.

IN THE MATTER OF

LEAR SIEGLER, INC.

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

Docket C-2457. Complaint, Sept. 24, 1973—Decision, Sept. 24, 1973.

Consent order requiring a Santa Monica, California, manufacturer of safety helmets and other products, among other things to cease making unsubstantiated claims regarding the safety and/or superiority of its polycarbonate motorcycle helmets. Respondent is further required to send to each of its customers a sufficient quantity of new cartons to replace those cartons bearing the statement "World's Finest Helmet" in their possession and to reimburse its customers for their expenses incurred in repacking the helmets in the new cartons.

Appearances

For the Commission: *David Middaugh.*

For the respondent: *Henry C. Thumann, O'Melveney & Myers*, Los Angeles California.

COMPLAINT

The Federal Trade Commission, having reason to believe that Lear Siegler, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating Section 5 of the Federal

Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Lear Siegler, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3171 South Bundy Drive, Santa Monica, California.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of safety helmets and other products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused its various products, including safety helmets, to be shipped from its plants and facilities in various States of the United States to distributors and retailers located in various other States of the United States and in Canada. Respondent maintains, and at all times mentioned herein has maintained, a substantial and continuous course of trade in such products, including safety helmets, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has made and caused to be made, and continues to make and cause to be made, in advertising and on cartons in which its safety helmets are sold and offered for sale to the general public, certain statements and representations with respect to the purported safety qualities and/or superiority of said helmets. Said statements and representations include the following statement, displayed prominently on the cartons of respondent's El Dorado 77 polycarbonate shell safety helmets: "World's Finest Helmet."

PAR. 5. By and through the use of the aforesaid statement, and others of similar import and meaning but not expressly set out herein, respondent has represented and is now representing directly or by implication that its said safety helmets are superior to all other safety helmets with respect to quality and safety.

PAR. 6. In truth and in fact, respondent's aforesaid safety helmets were not and are not superior to all other safety helmets with respect to quality and safety. In fact, no safety helmet with a shell of polycarbonate construction has, as of the present date, passed certain recognized safety tests which helmets with shells constructed of different materials have passed. Therefore, the statements and representations set out in Pargraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of substantial quantities of respondent's helmets under the erroneous and mistaken belief that said statements and representations were and are true.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondent has been and now is in substantial competition, in commerce, with corporations, firms, and individuals engaged in the sale and distribution of safety helmets of the same general kind and nature as those sold by respondent.

PAR. 9. 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 and deceptive acts and practices in commerce and unfair methods of competition in 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 Seattle 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 thirty (30) 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 Lear Siegler, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3171 South Bundy Drive, Santa Monica, 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 Lear Siegler, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, shall forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication that:

1. Its polycarbonate motorcycle helmets are the finest, safest, or best motorcycle helmets;

2. Any product presently manufactured or manufactured in the future by Bon-Aire Division of Lear Siegler, for as long as such product is manufactured by Bon-Aire or any other division or subsidiary of Lear Siegler, is comparable or superior to any other product with respect to safety or has met or passed any safety standard or test;

Provided however, Such representations may be made if they are fully substantiated by competent, controlled scientific tests conducted by experts, the results of which are available for inspection by the general public.

It is further ordered, That respondent shall forthwith send by certified mail return receipt requested to each of its customers, including wholesalers, distributors and retailers that have purchased motorcycle helmets packaged in cartons bearing the statement "World's Finest Helmet" or words of similar import and meaning, a sufficient quantity of new cartons to replace those cartons bearing the statement "World's Finest Helmet" in the possession of respondent's customers. Respondent shall also send, together with the new cartons, instructions that:

1. The new cartons are to replace cartons bearing the statement "World's Finest Helmet;"

2. Respondent will reimburse its customers for their reasonable

expenses incurred in repacking the motorcycle helmets in the new cartons;

3. Respondent's customers are requested to send new cartons and instructions to their customers, if their customers possess respondent's helmets in cartons bearing the statement "World's Finest Helmet" for purposes of sale, directly or indirectly, to the public. These materials will be furnished by respondent;

4. The old cartons are to be destroyed; and

5. Respondent is taking this action pursuant to a consent agreement with the Federal Trade Commission.

Respondent shall also send a follow-up letter to its customers to ascertain the extent of their compliance with the above-stated instructions.

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 shall forthwith distribute, to each of the wholesale customers of Bon-Aire Division of Lear Siegler, a copy of this order and the accompanying complaint.

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.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

ROYAL INDUSTRIES, INC.

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

Docket C-2458. Complaint, Sept. 24, 1973—Decision, Sept. 24, 1973.

Consent order requiring a Pasadena, California, manufacturer and seller of safety helmets and other products, among other things to cease making unsubstantiated claims regarding the safety and/or superiority of its Grant polycarbonate helmets. Further, respondent is required to (1) recall and retrieve all promotional material containing such statements as "World's Finest Hel-

met" and "World's Safest Helmet," (2) send gummed strips to all wholesalers and distributors to be placed on the helmet boxes over the statement "World's Finest Helmet" and (3) put warning notices on its helmets that their safety properties may be destroyed if paints, solvents or like substances are used on them.

Appearances

For the Commission: *William C. Erxleben* and *David A. Middaugh.*

For the respondent: *Charles W. Stoll*, of *Irsfeld, Irsfeld & Younger*, Los Angeles, California.

COMPLAINT

The Federal Trade Commission, having reason to believe that Royal Industries, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 980 South Arroyo Parkway, Pasadena, California.

PAR. 2. Respondent is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of safety helmets and other products.

PAR. 3. In the course and conduct of its business, respondent now causes and has caused its various products, including safety helmets, when sold, to be shipped from its plants and facilities in various States of the United States to distributors and retailers located in various other States of the United States and in Canada. Respondent maintains, and at all times mentioned herein has maintained, a substantial and continuous course of trade in such products, including safety helmets, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In said course and conduct of its business, respondent has made and caused to be made, and continues to make and to cause to be made, in advertising and on cartons in which safety helmets are sold and offered for sale to the general public, certain statements and representations with respect to the purported safety qualities and/ or superiority of its helmets. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

Let's face it. Grant Helmets are the best safety helmets money can buy * * *. All helmets meet or exceed government, industry and independent testing laboratory safety standards.

The toughest of them all * * *. Inner liners with shock absorbant qualities to meet all safety standards.

Surpass Z–90 safety standards.

If you care enough to want the best, wear a Grant Helmet.

* * * makes our helmet the world's safest.

* * * Grant Helmets—the safest.

THE TEST OF SAFETY—our research and testing facilities are recognized *by the industry itself* as the best in the business. Helmets and helmet components are subjected to exhaustive penetration and shock absorbancy tests which far surpass the standards set by regulatory agencies. Many of the testing procedures were developed by our own engineers, simply because there were no other ways to test helmets as strong as ours are. Our "crusher," for example, slams a steel dart into a helmet with the force of 250 pounds. Most fiberglass helmets cannot survive that shock. Our polycarbonate ones can. In fact, our experience shows that conventional testing is not a sufficient indicator of a helmet's safety (it's possible for a helmet to "pass" the test, even while it's being destroyed in the process!). The way we see it, our tests should be the toughest that we—or anyone—can devise. Only then can we say that we make the world's safest helmet.

PAR. 5. By and through the use of the aforesaid statements, and others of similar import and meaning but not expressly set out herein, respondent has represented and is now representing directly or by implication that:

1. Grant polycarbonate helmets are the safest, finest and best safety helmets.

2. Grant polycarbonate helmets have met or exceeded Z–90.1 safety standards and other more rigorous safety tests.

3. Grant polycarbonate helmets are superior to fiberglass helmets with respect to strength and safety.

4. Grant polycarbonate helmets have passed more rigorous tests than any other safety helmets.

PAR. 6. In truth and in fact:

1. Grant polycarbonate helmets are not the safest, or best safety helmets.

2. Scientific tests and other evidence are ambiguous as to whether Grant polycarbonate helmets have at all times in the past met or exceeded Z–90.1 safety standards.

3. Grant polycarbonate helmets are not superior to most fiberglass helmets with respect to strength and safety.

4. Grant polycarbonate helmets have not passed more rigorous tests than any other safety helmets. In fact, no safety helmet with a shell of polycarbonate construction has ever passed certain recognized safety tests which helmets with shells constructed of different materials have passed.

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

PAR. 7. In the further course and conduct of its business, respondent has placed and caused to be placed, and continues to place and cause to be placed, in the interior of each of its polycarbonate shell safety helmets, a notice which reads in substance as follows:

WARNING—unless recommended by the manufacturer, no chemicals, solvents, paints, adhesives, or other substances should be used on this helmet.

Clean only with mild soap and water.

No protective headgear can protect the wearer against all foreseeable impacts. However, for maximum protection under this standard, the helmet must be of good fit and all retention straps must be securely fastened.

This protective headgear is so constructed that the energy of a severe blow is absorbed through partial destruction of the headgear, though damage may not be visible to the naked eye. If it suffers such an impact, it should either be returned to the manufacturer for competent inspection or destroyed and replaced.

By failing to supply any other warning information or explanation in or on such helmets, respondent has failed to disclose, and continues to fail to disclose, the fact that contact with high test gasoline or with the other named substances may substantially reduce or nullify, or even entirely destroy, the impact resistance and other safety properties of said polycarbonate helmets. Respondent has also failed to disclose, and continues to fail to disclose, the fact that such diminution of safety properties is normally invisible and likely to be undetected by the owner and wearer of the helmet. Such facts would, if known, constitute a substantial drawback of said safety helmet to potential purchasers. Thus, respondent has failed to disclose material facts, which, if known by potential purchasers, would affect their decision whether or not to buy said helmet. Therefore, the aforesaid acts and practices were and are misleading, unfair and deceptive.

PAR. 8. The use by respondent of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of substantial quantities of the respondent's helmets in reliance upon said statements and representations.

PAR. 9. In the course and conduct of its business and at all times mentioned herein, respondent has been and now is in substantial competition, in commerce, with corporations, firms, and individuals engaged in the sale and distribution of safety helmets of the same general kind and nature as those sold by respondent.

PAR. 10. The aforesaid acts and practices of respondent as herein

alleged were and are to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce and unfair methods of competition in 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 Seattle 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 thirty (30) 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. Royal Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 980 South Arroyo Parkway, Pasadena, 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, its successors and assigns, its officers, agents, representatives, and employees directly or through any cor-

poration, subsidiary, division or other device, shall forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication, unless such representations are fully substantiated by clear and convincing evidence of controlled scientific tests conducted by experts, the results and methodology of which are available for inspection by the general public, that:

1. Grant polycarbonate helmets are the safest, finest or best safety helmets;

2. Grant polycarbonate helmets are superior to most fiberglass helmets with respect to strength and safety;

3. Grant polycarbonate helmets have passed more rigorous tests than any other safety helmets; and

4. Any product presently manufactured or manufactured in the future by Grant Division of Royal Industries, for as long as such product is manufactured by Grant or any other division or subsidiary of Royal Industries, is comparable or superior to any other product with respect to safety or has met or passed any safety standard or test.

It is further ordered, That respondent shall forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication, unless such representations are fully substantiated by clear and convincing evidence of controlled scientific tests conducted by experts, the results and methodology of which are available for inspection by the general public, that Grant polycarbonate helmets meet or exceed Z–90.1 safety tests or other more rigorous safety tests.

It is further ordered, That respondent shall clearly and conspicuously disclose *at least* the following warning information in the manner and in each of the places hereinafter specified:

WARNING: DO NOT USE PAINTS, SOLVENTS, CHEMICALS, ADHESIVES, HIGH TEST GASOLINE OR LIKE SUBSTANCES ON THIS SAFETY HELMET. IF SUCH SUBSTANCES ARE APPLIED TO OR COME IN CONTACT WITH THIS HELMET, THE IMPACT RESISTANCE AND OTHER SAFETY PROPERTIES OF THE HELMET MAY BE DESTROYED. THESE DANGEROUS CONDITIONS MAY NOT BE APPARENT OR READILY DETECTABLE BY THE USER.

The aforesaid warning information shall be permanently affixed to the interior of each polycarbonate helmet in such a way as to be easily noticed and read by a person glancing into the interior of the helmet. The same warning information shall also be set forth clearly and conspicuously on a card measuring at least two inches by four inches, affixed to the chin strap or retaining strap of each such helmet.

It is further ordered, That respondent shall forthwith recall and retrieve from distributors and retailers all promotional materials containing the statements "World's Finest Helmet," "World's Safest Helmet," or words of similar import and meaning, in reference to any polycarbonate shell safety helmet manufactured, sold, or distributed by respondent. Respondent shall recall and retrieve said materials from each person, partnership, corporation, or other entity which possesses them for the purpose of selling or offering for sale said helmets to the public or for the purpose of causing said helmets to be sold or offered for sale to the public.

It is further ordered, That respondent shall forthwith send by certified mail return receipt requested, gummed or adhesive strips to each of its wholesalers, distributors, or other persons who possess for purposes of sale, directly or indirectly, to the public, Grant polycarbonate helmets in packaging which bears the statement "World's Finest Helmet." Said gummed or adhesive strips are to be placed over each statement of "World's Finest Helmet" on the helmet packaging in such a manner as will completely cover and block out such statements.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and, along with a copy of the accompanying complaint, to each of the wholesale customers of Grant Division of Royal Industries.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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 this order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

HELIX MARKETING CORPORATION, ET AL.

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

Docket C-2076. Complaint Nov. 11, 1971—Modifying Order and Opinion, Sept. 25, 1973

Order reopening proceedings and modifying subparagraphs (c), (d), and (g) of Paragraph 3 of the original order to cease and desist, 79 F.T.C. 711, 36 F.R. 22821, which prohibit the threat of legal action or collection action, by expanding said paragraphs to permit such assertions to be made if respondents can establish certain affirmative defenses.

Appearances

For the Commission: *Joan Bernstein*, Deputy Director of Consumer Protection.

For the respondents: *Geist, Netter & Marks*, New York, New York.

OPINION OF THE COMMISSION

On May 14, 1973, respondent Helix Marketing Corporation filed a petition on behalf of captioned respondents to reopen the proceeding for the purpose of modifying subparagraphs 3(c), 3(d) and 3(g) of the order to cease and desist entered by the Commission on November 3, 1971. The Acting Director, Bureau of Consumer Protection filed an answer dated June 8, 1973, not opposing reopening, but proposing changes different from those advanced by respondents. Thereupon, the Commission issued, on June 19, 1973, an Order Proposing Modification of Order to Cease and Desist, ordering respondents to show cause why the modifications proposed therein should not be adopted. Respondents have replied by memorandum received August 9, 1973, and the Bureau of Consumer Protection has answered by memorandum received September 10, 1973.

Upon consideration of the papers before it, the Commission is of the view that the original order to cease and desist should be modified largely in accordance with the Commission's proposal of June 19, 1973, with one amendment [in subparagraph 3(c)] to reflect arguments raised by respondents in their petitions. (A few stylistic changes have also been made in the June 19, 1973, proposal to clarify the meaning of certain provisions.)

The original order of November 3, 1971, prohibits respondents from representing, directly or by implication, that:

(c) Legal action will be or may be taken against a delinquent debtor unless payment is made on a delinquent account.

(d) Legal action has been taken and suit filed against a delinquent account.

* * * * * * *

(g) Accounts are or may be turned over to collection agencies.

The proposed modification would retain the general prohibitions on threatening legal action or collection action, but permit such assertions to be made if respondents can establish certain affirmative defenses. Thus, Paragraph (d) of the proposed modification would permit a representation that legal action has been taken and a suit filed against a delinquent, provided respondents can demonstrate that "prior to making the representation respondents had in fact taken legal action and filed suit against the delinquent debtor." Respondents make no objection to this modification, and it is included in the appended order.

Similarly, nothing in respondents' papers speaks to the proposed subparagraph (c)(1) which prohibits the representation that "legal action will be taken against a delinquent debtor unless payment is made on a delinquent account" except in the event that respondents can establish that "they do in fact take such legal action when payment is not made in all cases where the representation is made." This paragraph is thus retained in our order.

Respondents do object to Paragraphs (c)(2) and (g) of the proposed modification, which prohibit representing that "legal action may be taken" and that "accounts are or may be turned over to collection agencies" unless respondents can demonstrate by way of affirmative defense that "they do in fact take such legal action against a *majority* of such debtors who do not make payment on such delinquent accounts" and that "they do in fact turn over a majority of such delinquent accounts to independent collection agencies."

Respondents argue that, for a variety of reasons, it often turns out that legal action or referral to a collection agency is deemed advisable in the case of fewer than half of all delinquent customers who fail to pay their debts after creditor contact. Therefore, respondents would have us amend the order to permit as an affirmative defense in Paragraphs (c)(2) and (g) a showing that legal or collection action is taken against only a "substantial number" of delinquent debtors who do not pay after contact.

The Bureau of Consumer Protection objects, arguing that a standard of "substantiality" is difficult to enforce and that if respondents are to be permitted to represent the possibility of something occurring, it should be more likely than not that it will.

With respect to referral of accounts to a collection agency, we believe the bureau is clearly correct. We can perceive, and respondents have pointed out, few if any circumstances that might intervene between the time a threat to refer to a collection agency is made, and the time such referral is actually made so as to justify threatening collection activity if, in fact, such threats prove idle on less than half those occasions in which no payment is made in response to the threat. Clearly respondents should be prepared to turn an account over for collection at the time a threat to do so is made, if payment is not forthcoming. If they are not so prepared, they should not so represent. If they are so prepared, it is hard to see how they will not end up referring well over 50 percent of such delinquent accounts to agencies.

A more difficult question is raised with respect to Paragraph (c) (2), pertaining to representations that "legal action may be taken." As respondents point out, following notice to a debtor that legal action may be taken, and subsequent to referral of the matter to a lawyer, a variety of factors may intervene that result in legal proceedings not being instituted. Respondents contend that the result of this is that legal proceedings are instituted in a "substantial" number of cases in which they might wish to represent that legal proceedings "may be instituted," but not in a majority. To preclude reference to possible legal action under such circumstances, respondents argue, deprives them of a needed weapon in their collection activities.

It is true that any restriction on the capacity of a creditor to threaten his customers, truthfully or otherwise, restricts his capacity to collect debts allegedly due him and renders the collection process more expensive for all concerned. At the same time, the Commission, in issuing its Order to Cease and Desist in this matter, had reason to believe that respondents were making unlawfully false representations with respect to the taking of legal action in debt collection, a practice that imposes costs of its own on consumers and society.[1] While respondents aver that their mode of operation has changed to some extent, it is still necessary that they be held, by order, to a strict standard of truthfulness in the making of such claims, based on our reason to believe in

[1] Respondents consented to the order in this matter. There was thus no trial on the merits, nor do respondents concede the allegations of the complaint, but, by the same token, the Commission's position, that it has reason to believe the allegations of the complaint, is not disturbed.

their past propensity to abuse such claims. For this reason, the test of "substantiality" proposed by respondents must be rejected, for it would render it exceedingly difficult to ensure, via enforcement activity, maintenance of the requisite truthfulness in the use of such statements.

We believe that respondents may reconcile the demands of accuracy with those of inexpensive debt collection by resort to greater precision in their use of threatening language. Respondents allege that they do, in fact, refer many delinquent accounts to attorneys, who subsequently counsel for or against taking legal action. Our order makes explicit [Subparagraph (c)(2)] that respondents will not be in violation if they merely represent that an account may be *referred to an attorney for determination of appropriate action*, if in fact this is done in a majority of cases in which no payment is made in response to this threat. Once the attorney recommends legal action, but before it is taken, respondents may inform their debtors that they (1) will or (2) may take such action if payment is not forthcoming, provided that action is taken in (1) all or (2) a majority of cases.

We believe that the appended order will thus permit respondents to make appropriately threatening statements at each stage of the collection process and prior to institution of costly collection actions, while at the same time adhering to a strict and enforceable standard of truthfulness, necessitated by practices alleged in the complaint.

For the foregoing reasons, the Order to Cease and Desist in this matter is amended as described hereinabove. An appropriate Order is appended.

Order Reopening Proceedings and Modifying Order To Cease and Desist

This matter having been considered by the Commission upon the motion of May 14, 1973, by respondents to open this matter, pursuant to Section 3.72(b)(2) of the Commission's Rules of Practice, and upon subsequent petitions and replies by respondents and the Bureau of Consumer Protection relevant thereto, and the Commission, for the reasons stated in the accompanying Opinion, in its discretion, determined to grant the Petition to Reopen, and to modify the Order as provided hereinafter:

It is ordered, That the proceedings in this matter be reopened and that subparagraphs (c), (d), and (g) of Paragraph 3 of the Order to Cease and Desist issued against respondents on November 3, 1971, be modified to read as follows:

(c) (1) Legal action *will* be taken against a delinquent debtor unless payment is made on a delinquent account; *Provided, however*, That it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that they do, in fact, take such legal action when payment is not made in *all* cases in which the representation is made.

(c) (2) Legal action *may* be taken against a delinquent debtor unless payment is made on a delinquent account; *Provided, however*, That it shall be a defense in any enforcement proceeding brought for respondents to establish that they do in fact take such legal action against a *majority* of debtors to whom the representation is made who do not make payment on such delinquent accounts; and, *Provided further*, That it shall not be a violation of this subsection for respondents to represent that they may refer the account of a delinquent debtor to an attorney to determine what action is appropriate, if, in fact, they can establish that they do in fact refer the accounts of delinquent debtors to an independent attorney for evaluation of what action is appropriate in a majority of cases in which such representation is made and payment is not made on an account.

(d) Legal action has been taken and suit filed against a delinquent debtor; *Provided, however*, That it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that prior to making the representation respondents had, in fact, taken legal action and filed suit against the delinquent debtor.

(g) Accounts are or may be turned over to collection agencies; *Provided, however*, That it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that they do, in fact, turn a majority of delinquent accounts over to independent collection agencies in cases in which such representations are made and payment is not made on the account.

IN THE MATTER OF

AMERICAN DAIRY ASSOCIATION, ET AL.

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

Docket C-2495. Complaint, Sept. 25, 1973—Decision, Sept. 25, 1973.

Consent order requiring a Chicago, Illinois, promoter of milk and milk products, among other things to cease disseminating advertising which represents milk

as "fat free," misrepresents the dietary effects of its products, misrepresents the fat content and nutritional value of milk and milk products.

Appearances

For the Commission: *Theodore J. Garrish.*

For the respondents: *Rufus E. Wilson*, of *McKean, Whitehead & Wilson*, Washington, D.C. for American Dairy Association; *Ronald L. Engel*, of *Kirkland & Ellis*, Chicago, Illinois for Leo Burnett Company, Inc.

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 American Dairy Association, a not-for-profit corporation, and Leo Burnett Company, Inc., a 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 American Dairy Association is a not-for-profit 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 20 North Wacker Drive, Chicago, Illinois.

PAR. 2. Respondent Leo Burnett Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Prudential Plaza, Chicago, Illinois.

PAR. 3. Respondent American Dairy Association is now, and has been for some time last past, engaged in promoting the sale of milk and milk products. Milk and milk products are food products as "food" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Leo Burnett Company, Inc., is now, and for some time last past has been, an advertising agency for American Dairy Association and now prepares and places for publication, and for some time last past has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein, to promote the sale of milk and milk products.

PAR. 5. As a result of the advertising of milk prepared and placed for publication by Leo Burnett Company, Inc., on behalf of American

Dairy Association, milk has been sold and shipped from farms and facilities located in various states to purchasers thereof located in various other States of the United States in the District of Columbia, and at all times mentioned herein a course of trade in milk has been maintained in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in said commerce has been and is substantial.

PAR. 6. In the course and conduct of their business, respondents have disseminated, or caused the dissemination of, certain advertisements of milk by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to radio broadcasts transmitted by radio 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 milk, and have disseminated, or caused the dissemination of, advertisements of milk by various means, including but not limited to the aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of milk in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Among and typical of the statements and representations contained in said advertisements disseminated as herein above set forth are the following:

* * * if there was a little less of you, She'd love you a whole lot more. That, my friend, is why I'm tell'n you, to get some milk and give it a pour. Ninety-six per cent fat free. Build yourself a whole new you * * * Take it from the American Dairy Association, milk can help you to be a new you.

* * * And if there was a little less of you, She'd love you a whole lot more 'Cause there's a new you coming, The Grade A Way.

PAR. 8. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, without a disclosure in said advertisements of the caloric content of whole milk or the caloric content of the fat in whole milk, respondents have represented directly or by implication:

1. That the number of calories in whole milk is not substantial or significant to a person on a calorie-restricted diet or a weight-reducing diet.

2. That consumption of whole milk will significantly benefit or assist a person in establishing and/or maintaining a calorie-restricted or a weight-reducing diet.

3. That the amount of fat in whole milk is not substantial or significant to a person on a fat-restricted diet or a low-fat diet.

4. That consumption of whole milk will significantly benefit or assist a person in establishing and/or maintaining a fat-restricted diet or a low-fat diet.

PAR. 9. In truth and in fact:

1. The number of calories in whole milk is substantial or significant to a person on a calorie-restricted diet or a weight-reducing diet.

2. In many cases it is not desirable for a person on a calorie-restricted diet or a weight-reducing diet to drink a substantial amount of whole milk.

3. The amount of fat in whole milk is substantial or significant to a person on a fat-restricted or low-fat diet.

4. In many cases it is not desirable for a person on a fat-restricted diet or a low-fat diet to drink a substantial amount of whole milk.

Therefore, the advertisements referred to in Paragraph Seven hereof were and are false and misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 10. The aforesaid advertisements also were and are misleading in material respects because they failed to reveal the caloric content of whole milk or the caloric content of the fat in whole milk, or the amount of fat in whole milk, facts which are material in the light of the representations made, and with respect to the consequences that may result from the consumption of whole milk by persons on calorie-restricted diets, weight-reducing diets, fat-restricted diets or low-fat diets.

PAR. 11. The dissemination or the causing to be disseminated by the respondents of false advertisements as aforesaid, constituted, and now constitutes, unfair or 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection 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 thirty (30) 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:

I

1. The respondent American Dairy Association is a not-for-profit 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 20 North Wacker Drive, Chicago, Illinois.

2. The respondent Leo Burnett, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Prudential Plaza, Chicago, Illinois.

3. 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

II

It is ordered, That respondents American Dairy Association, a not-for-profit corporation, and Leo Burnett Company, Inc., a corporation, and their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of the products identified below, do forthwith cease and desist from, directly or indirectly:

I. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement that:

a. Uses the phrase "96 percent fat free" to describe whole milk (that is, milk containing not less than 8.0 percent milk solids not fat and from 3.0 percent to 3.8 percent milkfat), low-fat milk (that is, milk from which sufficient milkfat has been removed to reduce its milkfat content to not less than 0.5 percent and not more than 2.0 percent milkfat) or any dairy product containing whole milk or low-fat milk, or represents in any other manner that any such product, or any specific percentage of such product, is "fat free."

b. Represents, directly or by implication, that whole milk, low-fat milk, or any dairy product containing whole milk or low-fat milk does not contain many calories, or that such consuming such product will save on calories, or that such product is of value in maintaining weight or reducing weight, or that consuming such product will have no effect or an insignificant effect on increasing weight, unless a clear and conspicuous disclosure is made in immediate connection therewith of the number of calories in a cup or other common measure of such product.

c. Represents, directly or by implication, that whole milk, low-fat milk, or any dairy product containing whole milk or low-fat milk is low in fat unless a clear and conspicuous disclosure is made in immediate connection therewith of the number of calories of fat in a cup or other common measure of such product.

d. Represents that it is desirable for any person on a calorie restricted diet, or a weight-reducing diet to consume whole milk, low-fat milk or any dairy product containing whole milk or low-fat milk unless a clear and conspicuous disclosure is made in immediate connection therewith of the number of calories in a cup or other common measure of such product.

e. Represents that it is desirable for any person on a fat-restricted diet or a low-fat diet to consume whole milk, low-fat milk or any product made from whole milk or low-fat milk unless a clear and conspicuous statement is made in imme-

diate connection therewith of the number of grams of fat in a cup or other common measure of such product.

Provided, however, That subparagraphs (a), (b), (c), (d), and (e), of Paragraph I shall not be applicable to:

(i) truthful statements limited to a recitation of the percentage, range of percentages, average of percentages, or maximum percentage of the fat in whole milk, low-fat milk, or any dairy product containing whole milk or low-fat milk in terms of percentage by weight (such as by use of the statements:

(1) "contains ——— % fat";

(2) "contains ——— to ——— % fat";

(3) "contains ——— % fat average";

(4) "contains ——— % fat maximum"; or

(5) "Contains about [or approximately] % fat");

(ii) The use of the name "low-fat milk," for low-fat milk (as above-defined); or

(iii) any product other than whole milk, low-fat milk, or any dairy product containing whole milk or low-fat milk.

f. Misrepresents, directly or by implication, the nutritional value of any dairy product in connection with dieting undertaken for the purpose of weight reduction, prevention of weight gain, or regulation of fat intake; *Provided, however*, That this subparagraph (f) shall not be applicable to those statements and names listed in parts (i) and (ii) of the provision which follows subparagraph (e) above.

II. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of products subject to this order, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in, or which fails to comply with the affirmative disclosure requirements of, Paragraph I hereof.

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

It is further ordered, That respondents notify the Commission at least 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 corporations which may affect compliance obligations arising out of the order.

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.

In the Matter of

TRANS-AMERICAN COLLECTIONS, INC., ET AL.

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

Docket 8901. Complaint Oct. 16, 1972—Decision, Sept. 26, 1973.*

Consent order requiring a Bloomington, Illinois, seller of debt collection services, among other things to cease using materials which simulate telegraphic communications; using materials which misrepresent the nature, content or purpose of any communication; threatening debt collection suits, not in good faith; failing to include a notice to the effect that communications are only a reminder notice and that respondent, Trans-American, cannot accept monies nor will it take any action regarding this claim; and furnishing to others means and instrumentalities of misrepresentation or deception.

Appearances

For the Commission: *Leroy M. Yarnoff*, *Frederick D. Clements* and *Thomas S. Westhoff*.

For the respondents: *Wald*, *Harkrader & Ross*, Washington, D.C. and *Glickfield & Graves*, Marion, Indiana.

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 Trans-American Collections, Inc., a corporation, and Wayne E. Martin and Eleanor G. Martin, individually and as officers of said corporation, 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

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*The complaint is reported as amended by the administrative law judge's order of January 9, 1973.