

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

V

*It is further ordered,* That respondents, individually, within sixty (60) days after the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each has complied with this order.

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IN THE MATTER OF  
LITTON INDUSTRIES, INC.

*Docket 8778. Order, May 16, 1973.*

Order reopening the proceeding solely for the purpose of re-examining the question of relief in its entirety; remanding the proceeding to an administrative law judge to conduct hearings on the question of relief; and denying respondent's request for oral argument on the petition for reconsideration. Commissioner Jones dissenting with statement.

DISSENTING STATEMENT

BY JONES; *Commissioner:*

Today, by its decision to remand the issue of relief to the administrative law judge, the Commission<sup>1</sup> has in effect reversed itself on its decision and order in the above-captioned case which held that Litton's acquisition of Triumph-Adler had violated Section 7 of the Clayton Act and ordered Litton to divest itself of Triumph-Adler. The Commission has taken this action in response to Litton's petition to the Commission for Reconsideration of the Order of Divestiture or Reopening of the Proceedings.

Under the Commission's Rules of Practice, Petition for Reconsideration filed under Rule 3.55 are required to be limited "to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."<sup>2</sup>

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<sup>1</sup> The Commission's decision was participated in by Commissioners Jones, Dixon and Dennison with Commissioner MacIntyre abstaining. Commissioner MacIntyre is participating in the current Commission action and is concurring with it.

<sup>2</sup> Petition for reopening are covered by Rule 3.72(b)(2) which may be granted upon issuance by the Commission of an order to show cause if the Commission determines that changed conditions of fact or law or the public interest requires such reopening.

Litton's arguments for reconsideration or reopening proceed on the following grounds:

1. The opinion was premised on an erroneous view of the law that divestiture was mandatory.

2. The Commission in ordering divestiture failed to consider substantial evidence in the record to the effect that IBM and SCM are growing stronger, that all other competitors in the market as a result of this competition, devaluation and IBM's single element typewriter, have been and are continuing to suffer, that Royal cannot survive without Triumph-Adler and that divestiture will further worsen the competitive situation (Brief pp. 19-31).

3. A variety of arguments to the effect that the opinion placed too much emphasis on the structure rather than the history of the typewriter industry; that incorrect measurements were made of the markets and industry concentration (Commissioner Dennison's opinion is cited as to these points); that analysis of the office typewriter market and specifically the office manual market is incorrect; that Litton's economic experts were ignored; and that divestiture will have adverse effects on the industry and typewriter dealers.

None of these arguments raise new issues of law or fact and each was in fact considered by the Commission before reaching its decision in this case. Nowhere in the opinion, for example, is there any suggestion that divestiture is a mandatory relief provision. All of the circumstances surrounding the market position of IBM and SCM were thoroughly argued and considered in both the Initial Decision and the Commission's Opinion and add absolutely nothing new for the Commission to consider. All of the other Litton arguments in this petition proceed again on Litton's view of the market which was rejected by the Commission in its opinion. All were fully discussed in this opinion and therefore in no way constitute grounds for reconsideration or reopening.

Litton attached to its petition and brief various affidavits of Litton's executive board of directors which add little to the record with two exceptions. The submitted material indicates that Xerox is apparently on the verge of entering the automatic typewriter market having purchased, in 1971, the automatic typewriter division of Itel Corporation (*See* Berry affidavit, pp. 7-8; Spelhaug affidavit pp. 2-3). It also indicates that the worsening monetary crises has allegedly made foreign

typewriters less price competitive with IBM than before. (Mills affidavit p. 2). I see nothing in either of these "facts" which affect the Commission's order to divest Triumph-Adler. In fact, it could be argued that IBM's market position will now be challenged by Xerox thus lessening the need for Royal's survival which Litton contends is needed to challenge IBM.

I can find nothing in Litton's petition to reconsider which was not already considered by the Commission. Nor can I find anything in its petition demonstrating either that Triumph-Adler cannot be viably divested nor that some relief short of divestiture offers any possibility of redressing the competitive imbalance and restraint which the Commission found was the consequence of the merger and the basis for its illegality under Section 7. For this reason, I do not believe that the requisite showing has been made out under our rules to warrant the remand now ordered by the Commission.

ORDER REOPENING PROCEEDING TO RECONSIDER  
THE ISSUE OF RELIEF

This matter is before the Commission upon respondent's Petition for Reconsideration of the Order of Divestiture or Reopening of Proceedings, filed with the Secretary of the Commission on April 9, 1973.

Upon consideration of all the papers before it, the Commission has determined that the above-captioned proceeding should be reopened solely for further consideration of the question of relief. Accordingly,

*It is ordered,* That the above-captioned proceeding be, and it hereby is, reopened solely for the purpose of re-examining the question of relief in its entirety.

*It is further ordered,* That the above-captioned proceeding be, and it hereby is, remanded to an administrative law judge to conduct hearings on the question of relief. In conducting this inquiry, the administrative law judge shall examine the question of appropriate relief in its entirety, and upon completion of the hearings, he shall furnish the Commission with his findings on the issue of relief and his recommendations.

*It is further ordered,* That respondent's request for oral argument before the Commission on the instant petition be, and it hereby is, denied.

Chairman Engman not participating, and Commissioner Jones voting in the negative.

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Order

IN THE MATTER OF  
AMERICAN HOME PRODUCTS CORPORATION, ET AL.

*Docket 8918. Order, May 16, 1973.*

Order denying respondents' (1) petition for extraordinary review of the administrative law judge's orders denying respondents' motion for a more definite statement and refusing to make a determination allowing an immediate appeal, and (2) motion for stay of respondents' time to answer the complaint; and granting respondents' motion for stay of time to answer the complaint up to and including five days after service of the order.

ORDER DENYING PETITION FOR EXTRAORDINARY REVIEW,  
APPLICATION FOR INTERLOCUTORY REVIEW AND RULING UPON  
MOTION FOR STAY

On March 29, 1973, respondents filed with the administrative law judge a motion for a more definite statement of the allegations contained in the administrative complaint. By order filed on April 12, 1973, the administrative law judge denied respondents' motion. On April 18, 1973, respondents filed a request with the administrative law judge for a determination allowing an immediate appeal from his order of April 12, 1973, and for a stay of the proceedings. The administrative law judge denied both the application for a determination allowing an immediate appeal and the application for a stay by an order filed on April 20, 1973.

On April 25, 1973, respondents filed with the Commission (1) a petition for extraordinary review by the Commission, of the administrative law judge's orders denying respondents' motion for a more definite statement and refusing to make a determination allowing an immediate appeal; (2) an application for interlocutory review of the administrative law judge's order denying respondents' motion for a more definite statement; and (3) a motion for stay of respondents' time to answer the complaint. On May 2, 1973, complaint counsel filed a reply to the respondents' petition.

Upon consideration of the foregoing documents filed by respondents, the reply filed by complaint counsel and upon consideration of the administrative law judge's order filed on April 12, 1973, the Commission has determined that respondents have not made a sufficient showing for the granting of an interlocutory review or appeal under either Section 3.23(a) or Section 3.23(b) of the Commission's Rules of Practice. Accordingly,

*It is ordered*, That the aforesaid petition and application filed by respondents be, and the same hereby are, denied.

In view however of the circumstance that the time allowed for filing respondents' answer has expired,

*It is further ordered*, That respondents' motion for stay of time to answer the complaint be granted up to and including five (5) days after service of this order.

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IN THE MATTER OF

GEORGIA-PACIFIC CORPORATION

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

*Docket C-2402. Complaint, May 16, 1973—Decision, May 16, 1973.*

Consent order requiring a Portland, Oregon, manufacturer of a wide variety of products including wood, paper, pulp, chemicals and wood products, among other things to cease engaging in unfair methods of competition by systematically using its purchasing power to obtain sales to its actual or potential suppliers. Respondent is further required to destroy certain statistical data and maintain certain other records as set out in the order.

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 Georgia-Pacific Corporation, a corporation, hereinafter referred to as the 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 as follows:

PARAGRAPH 1. Respondent Georgia-Pacific Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 900 S.W. Fifth Avenue, Portland, Oregon. It owns a controlling interest in approximately forty subsidiary corporations.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture, sale and distribution of a wide variety of products including, but not limited to, wood, paper, paperboard, converted paper products, pulp, chemicals, plywood, gypsum, hardboard, flakeboard, particleboard, doors, aluminum,

mill work and furniture. In 1971 respondent had approximately 200 plants and more than 100 product distribution centers located throughout the United States. Respondent's total assets are approximately \$1.8 billion.

PAR. 3. In connection with its manufacturing and distribution operations, respondent purchases a substantial volume of raw materials, products or services from various suppliers located throughout the United States, many of which use, or can use, raw materials or products sold and distributed by respondent. During the period 1964 through 1971, respondent's annual purchases increased from approximately \$300 million to in excess of \$700 million, most of which were for substantial quantities of supplies and materials used for production of its manufactured goods throughout the United States and in the operation of its plants and offices. Respondent's annual net sales increased substantially during the period 1964 to 1971, from approximately \$500 million to \$1.4 billion.

PAR. 4. In the course and conduct of its business respondent is, and has been, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it has sold its materials and products to purchasers located in various States of the United States, and caused such materials and products, when sold, to be transported from its facilities in various States of the United States to such purchasers located in various other States of the United States.

PAR. 5. Except to the extent that competition has been frustrated, hindered, foreclosed, lessened or eliminated as hereinafter set forth, respondent has been and is now, in competition with firms, partnerships or corporations engaged in the business of manufacturing, distributing and selling wood, pulp, paper, gypsum, chemicals or other products in commerce.

PAR. 6. In the course and conduct of its business as described above respondent has, for a number of years and is now, engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act in that respondent has systematically utilized its purchasing power to obtain or attempt to obtain sales of its products, services, or raw materials to certain of its actual or potential suppliers.

PAR. 7. In order to utilize its purchasing power as described above respondent has engaged in one or more of the following acts and practices, but not limited thereto:

A. Compiled data on purchases from various suppliers and

sales to various suppliers and has collated certain such purchase and sales data of certain suppliers.

B. Disclosed statistical data or other information relating to its actual or potential purchases from certain companies to its sales personnel or its employees with purchasing and sales responsibilities.

C. Disclosed statistical data or other information relating to its actual or potential sales to certain companies to its purchasing personnel.

D. Disclosed specific purchasing or sales data, or other information to sales personnel for their use in selling or attempting to sell respondent's products to certain companies.

E. Utilized statistical sales or purchase data or other information in order to determine which suppliers should be favored or the extent to which suppliers should be permitted to participate in supplying respondent.

F. Communicated with its actual or potential suppliers regarding purchases or sales, in order to ascertain, develop, facilitate, or further a relationship of sales and purchases between respondent and the suppliers or another company.

G. Purchased or attempted to purchase from certain companies or their designees on the understanding that such companies would purchase from respondent or another company.

H. Sold or attempted to sell to certain companies or their designees on the understanding that such companies would sell to respondent or another company.

I. Refused to buy or reduced purchases from certain suppliers who did not purchase, maintain or increase purchases from the respondent or another company.

J. Purchased from certain companies in order to induce such companies to purchase from respondent or another company.

K. Sold or attempted to sell to certain companies in order to induce such companies to sell to respondent or another company.

L. Established a director of purchasing and trade relations whose responsibilities included but were not limited to, developing and coordinating respondent's trade relations with other supplying and buying corporations in order to stimulate or increase its sales.

PAR. 8. The acts and practices of respondent, described above in Paragraphs Six and Seven, have had and still have the capacity, tendency, and effect of (a) foreclosing the sale of substantial quantities of various products, services, or raw

materials to respondent by various actual or potential suppliers of such products, services, and raw materials, (b) foreclosing competitors of respondent in the sale of substantial quantities of various products, services, or raw materials, (c) giving respondent an unfair competitive advantage over its competitors, or (d) depriving its competitors or actual or potential suppliers of full and free competition in the market place.

PAR. 9. The acts and practices of respondent as herein alleged, were and are to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair acts and practices 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 Georgia-Pacific Corporation is a corporation



organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 900 S.W. Fifth Avenue, Portland, Oregon.

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

#### ORDER

For the purposes of this order, the definitions below shall apply, although words of inclusion used herein are not words of limitation:

“Respondent” includes Georgia-Pacific Corporation, a corporation, its subsidiaries, successors and assigns.

“Company” includes any business entity.

“Purchase” and “purchases” include (a) any receipt of products, services or raw materials from another company in exchange for money, products, services or raw materials, and (b) the leasing of anything of value from another company.

“Sell” and “sales” include any conveyance of products or raw materials to, or any performance of services for another company in exchange for money, products, services or raw materials.

#### I

*It is ordered*, That respondent, its officers, directors, employees, agents and representatives, directly or through any corporate or other device, shall forthwith cease and desist from:

A. Purchasing or entering into or adhering to any agreement or understanding to purchase from an actual or potential supplier on the understanding that any of such purchases are conditioned upon or related to any sales by respondent or any other company;

B. Selling or entering into, or adhering to any agreement or understanding to sell to an actual or potential customer on the understanding that any of such sales are conditioned upon or related to any purchases by respondent or any other company;

C. Purchasing in order to promote or induce sales to another company;

D. Selling in order to promote or induce sales by another company;

E. Communicating to another company that:

1. purchases by respondent or relative positions on respondent's bidder lists will or may be conditioned upon or related to sales by respondent or another company;

2. sales by respondent or relative positions on respondent's bidder lists will or may be conditioned upon or related to purchases by respondent or another company;

F. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate or further any relationship between purchases and sales of the nature prohibited by this order;

G. Preparing or maintaining statistical data which compares or otherwise relates purchases by respondent from a company to sales by respondent to such company;

H. Causing or permitting any of respondent's personnel holding any of the positions listed in Appendix 1, hereof, to influence, request, or suggest to any of respondent's personnel holding any of the positions listed in Appendixes 2 or 3, hereof, to consider respondent's actual or potential sales to any company as a factor in any decision to purchase from such company;

I. Causing or permitting any of respondent's personnel who are primarily and directly engaged in promoting or obtaining sales on behalf of respondent, including, but not limited to, respondent's personnel holding any of the positions listed in Appendix 2, hereof, to:

1. engage in purchasing;
2. obtain statistical data or other information which shows the amount of actual or potential purchases by respondent from any company;
3. attend any meeting, a purpose of which is the discussion of respondent's purchases or its purchasing strategy;
4. specify or recommend, because of the status of any company as an actual or potential customer of respondent, that purchases could or should be made from such company;

*Provided, however,* That nothing contained in this subparagraph shall prohibit any of respondent's personnel holding any of the positions listed in Appendix 2, hereof, and followed by brackets ([ ]), from:

- a. purchasing items for resale by the divisions of

respondent for which such individual is assigned sales and purchasing responsibilities;

b. obtaining statistical data or other information which shows the amount of actual or potential purchases of items for resale by the divisions of respondent for which such individual is assigned sales and purchasing responsibilities;

c. attending any meeting, the purpose of which is the discussion of respondent's purchases of items for resale or its strategy for purchasing such items;

J. Causing or permitting any of respondent's personnel who are primarily and directly engaged in purchasing on behalf of respondent, including, but not limited to, respondent's personnel holding any of the positions listed in Appendix 3, hereof, to:

1. engage in obtaining sales;
2. obtain statistical data or other information which shows the amount of actual or potential sales by respondent to any company;
3. attend any meeting, a purpose of which is the discussion of respondent's sales, or its strategy for obtaining sales;
4. specify or recommend, because of the status of any company as an actual or potential supplier to respondent, that sales could or should be made to such company;

*Provided, however,* That nothing contained in this subparagraph shall prohibit any of respondent's personnel holding any of the positions listed in Appendix 3, hereof, and followed by brackets ([ ]), from:

a. selling items purchased for resale by the divisions of respondent for which such individual is assigned purchasing and resale responsibilities;

b. obtaining statistical data or other information which shows the amount of actual or potential sales of items purchased for resale by the divisions of respondent for which such individual is assigned purchasing and resale responsibilities;

c. attending any meeting, the purpose of which is the discussion of respondent's sales of items purchased for resale by respondent or its strategy for selling such items.

## II

*It is further ordered,* That respondent shall, within thirty (30) days subsequent to the date of this order, destroy:

A. All statistical data in its possession, custody, or control which compares or otherwise relates purchases from another company to sales to such company;

B. All statistical data and other information, which shows the amount of actual or potential purchases by respondent from any company, and which is in the possession, custody or control of any of respondent's personnel holding any of the positions listed in Appendix 2, hereof;

C. All statistical data and other information which shows the amount of actual or potential sales by respondent to any company, and which is in the possession, custody, or control of any of respondent's personnel holding any of the positions listed in Appendix 3, hereof.

## III

*It is further ordered,* That respondent shall, within sixty (60) days subsequent to the date of this order:

A. Issue a copy of Attachment A, hereof, to each of respondent's personnel listed on its then-current Key Personnel List A or Key Personnel List B;

B. Insert and maintain the language of Attachment A hereof within all manuals and other such documents which set out respondent's policies or procedures for purchasing or for obtaining sales, or its policies relating to the compilation or distribution of statistical purchase or sales data.

## IV

*It is further ordered,* That respondent shall, beginning within sixty (60) days of the date of this order and for a period of one (1) year subsequent to such beginning date, mail or otherwise distribute copies of Attachment B, hereof, together with a copy of this order, exclusive of all appendixes, in the following manner:

A. Attached to each purchase order or substitute document issued by respondent to any supplier for any purchase in excess of \$5,000 documented thereby if such attachment has not previously been provided to such supplier in compliance with this paragraph;

B. Attached to each invoice or substitute document issued

by respondent to any customer for any sale made by respondent in excess of \$5,000 if such attachment has not previously been provided to such customer in compliance with this paragraph; *Provided, however*, in lieu of the requirement stated in this subparagraph B, for all sales made by respondent through its distribution division only, respondent may, in the alternative make a single distribution by mail of copies of said Attachment B and of this order (exclusive of all appendixes), to each of its customers listed on its then-current computerized distribution division customer list.

The above provisions of this Paragraph IV notwithstanding, respondent shall, within sixty (60) days subsequent to the date of this order, mail a copy of Attachment B, hereof, together with a copy of this order (exclusive of all appendixes), to each company which is a party with respondent to any contract or agreement of the nature described in Paragraph XI, below.

## V

*It is further ordered*, That respondent notify the Federal Trade Commission:

A. At least thirty (30) days prior to any proposed change in its corporate structure, 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 respondent which may affect compliance obligations arising out of this order;

B. Annually of all positions with responsibility for sales or purchases. For purposes of compliance with this subparagraph respondent shall furnish to the Federal Trade Commission at the end of each year a list of all such positions and the names of the employees holding each such positions.

## VI

*It is further ordered*, That respondent shall, within sixty (60) days subsequent to the date of this order, file with the Federal Trade Commission a written report setting forth in detail the manner and form in which it has complied with this order including, but not limited to, the name of each individual to whom a copy of Attachment A, hereto, was issued pursuant to Paragraph III, above.

## VII

*It is further ordered*, That respondent shall, within ninety (90) days subsequent to the first (1st) anniversary of the date of this order, provide the Federal Trade Commission with the name of each company to which copies of Attachment B, hereof, and this order were mailed or otherwise distributed pursuant to Paragraph IV, above.

## VIII

*It is further ordered*, That respondent shall, within sixty (60) days of the third (3rd) anniversary of the date of this order:

A. Cause each of its then-current personnel who, at such third (3rd) anniversary date of this order, hold any of the positions listed in Appendix 1, hereof, to complete and furnish to respondent's legal department a sworn statement in the form of Attachment C, hereof;

B. Cause each of its then-current personnel who, at such third (3rd) anniversary date of this order, hold any of the positions listed in Appendix 2, hereof, other than those positions preceded by an asterisk (\*), to complete and furnish to respondent's legal department a sworn statement in the form of Attachment D, hereof;

C. Cause each of its then-current personnel who, at such third (3rd) anniversary date of this order, hold any of the positions listed in Appendix 3, hereof, other than those positions preceded by an asterisk (\*), to complete and furnish to respondent's legal department a sworn statement in the form of Attachment E, hereof.

## IX

*It is further ordered*, That respondent shall:

A. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 1, hereof, and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment C, hereof;

B. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 2, hereof, other than those

positions preceded by an asterisk (\*), and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment D, hereof;

C. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 3, hereof, other than those positions preceded by an asterisk (\*), and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment E, hereof.

## X

*It is further ordered,* That respondent shall submit to the Federal Trade Commission:

A. Within ninety (90) days subsequent to the third (3rd) anniversary of the date of this order, all sworn statements which it has received pursuant to Paragraph VIII, above;

B. Within ninety (90) days subsequent to the first (1st) anniversary of the date of this order, and annually thereafter for a period of two (2) years, all sworn statements which it has received pursuant to Paragraph IX, above, together with the name and address of each individual who would have been required by Paragraph IX, above, but did not complete a sworn statement at any time in the one (1) year period immediately prior to such submission.

## XI

*It is further ordered,* That nothing contained in this order shall prohibit respondent from:

A. Entering into or adhering to any contract or agreement pursuant to which respondent shall purchase from another party any products which respondent also produces in exchange for the purchase from respondent by such other party of an approximately equal volume or value of like or similar products in any stage of process;

B. Entering into or adhering to any contract or

agreement for the conversion of respondent's products or goods into other forms for its own use or for resale or for the conversion by respondent of the products or goods of other parties;

C. Entering into or adhering to any contract or agreement for construction work or for the manufacture, installation, servicing or operating of equipment, products or facilities, or the furnishing of supplies, for respondent's own use, or the use of its employees, on the condition that respondent's or other specified products, goods or services be used in the performance of such contracts or agreements; *Provided, however,* That such contracts or agreements are not used to carry out or promote any reciprocal purchasing policy, arrangement or practice of the type prohibited by this order.

*Provided, however,* That nothing in this paragraph or any of its subparagraphs shall be construed as having application to, or limiting in any manner whatsoever, any other proceeding or investigation initiated by the Federal Trade Commission, and that the Federal Trade Commission reserves the right to take further action including the issuance of a complaint with respect to transactions of the nature described in this paragraph and each of its subparagraphs in the event that it shall at any time in the future have reason to believe that any of such transactions may violate any of the statutes administered by it.

## XII

*It is further ordered,* That nothing contained in this order shall prohibit respondent from preparing and compiling statistical data and information showing sales to particular customers or groups of customers ("sales summaries") and statistical data and information showing purchases from particular suppliers or groups of suppliers ("purchasing summaries") for use by its managerial personnel, *Provided,* That such sales and purchasing summaries are not used by any of such managerial personnel to carry out or promote any reciprocal purchasing policy, arrangement, or practice of the type prohibited by this order; *Provided further,* That no such sales summaries be made available to personnel with primary purchasing responsibility, and no such purchasing summaries be made available to personnel with primary sales responsibility; *Provided further,* That respondent prepare at the end of each year for a period of three (3) years subsequent to the date of this order, a list of all



such sales and purchasing summaries, and maintain for a period of five (5) years following their preparation, the original or a copy of each such sales and purchasing summary, together with a list of the personnel to whom each was distributed; and *Provided further*, That respondent shall send the above-described lists to the Federal Trade Commission at the end of each of such three years and shall grant any duly authorized representative of the Federal Trade Commission access to the sales and purchasing summaries to which such lists relate.

## XIII

*It is further ordered*, That respondent shall, for a period of five (5) years subsequent to the date of this order:

## A. Maintain:

1. all written contracts and agreements of the nature described in Paragraph XI, above; and
  2. documents sufficient to disclose the terms and substance of all oral contracts and agreements of the nature described in Paragraph XI, above;
- together with documents sufficient to show the total annual dollar value and/or volume of deliveries and receipts pursuant to each such written or oral contract and agreement;

B. Grant any duly authorized representative of the Federal Trade Commission access to all such contracts, agreements, and other documents;

C. Furnish to the Federal Trade Commission copies of all such contracts, agreements, and other documents which are requested by any of its duly authorized representatives.

## ATTACHMENT A

Re: Federal Trade Commission Order Concerning the Selling and Purchasing Activities of Georgia-Pacific Corporation and its Subsidiaries.

Pursuant to an Order of the Federal Trade Commission, we issue the following policies and guidelines:

*General*

No employee shall:

1. discuss, compare or exchange statistical data or other information with another company in order to ascertain, develop, facilitate or further any relationship between our purchases and our sales;
2. prepare, maintain or in any manner obtain statistical data which compares or otherwise relates our purchases from a company to our sales to such company.

*Purchasing*

It is our policy to purchase solely on the basis of price, quality and service. Purchasing personnel shall be prepared to justify all purchases in light of these criteria. No purchase may be conditioned upon or related to our sales or sales by any other company nor shall any employee suggest or imply to any actual or potential supplier that any purchase is so conditioned or related.

No Purchasing Department personnel shall:

1. engage in sales or marketing on our behalf;
2. in any manner obtain statistical data or other information which shows the amount of our actual or potential sales to any company;
3. attend any meeting, a purpose of which is the discussion of our sales or our strategy for obtaining sales;
4. specify or recommend to our sales or marketing personnel, because of the status of any company as an actual or potential supplier, that sales could or should be made to such company.

*Selling*

No employee promoting sales to any actual or potential customer shall suggest or imply that such sales are conditioned upon or related to our purchases or purchases by any other company.

No sales or marketing personnel shall:

1. engage in purchasing on our behalf;
2. in any manner obtain statistical data or other information which shows the amount of our actual or potential purchases from any company;
3. attend any meeting, a purpose of which is the discussion of our purchases or our purchasing strategy, except to the extent discussion concerns the purchase of items for resale;
4. specify or recommend to our purchasing personnel, because of the status of any company as an actual or potential customer, that purchases could or should be made from such company.

*Items Purchased for Resale*

Those employees who are assigned sales and purchasing responsibilities in connection with items purchased for resale by our company are not prohibited from performing such functions.

*Violation of Policies or Guidelines*

Violation of the above policies or guidelines shall subject any offending employee to dismissal from his employment.

## ATTACHMENT B

To our Customers and Suppliers:

Pursuant to the attached Order of the Federal Trade Commission, we herewith advise you that it is the policy of Georgia-Pacific Corporation to purchase solely on the basis of price, quality and service. We wish to assure you that our purchases will in no way be conditioned upon or related to our sales to you or any other company.

Chairman of the Board  
and President.

## ATTACHMENT C

Name and address:

Positions held, with dates, with Georgia-Pacific Corporation or its subsidiaries since \_\_\_\_\_ (the date of this Order) \_\_\_\_\_ :

I have marked the statement below which is true:

- \_\_\_1. I have engaged in one or more of the activities of the nature prohibited by Article I, subparagraphs A through H, inclusive, of \_\_\_ (this Order) \_\_\_ at some time since \_\_\_ (the date of this Order) \_\_\_.
- \_\_\_2. I have not engaged in any activities of the nature prohibited by Article I, subparagraphs A through H, inclusive, of \_\_\_ (this Order) \_\_\_ since \_\_\_ (the date of this Order) \_\_\_.

\_\_\_\_\_  
(Signature)

City of \_\_\_\_\_

State of \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1972.

\_\_\_\_\_  
(Notary Public)

#### ATTACHMENT D

Name and address:

Positions held, with dates, with Georgia-Pacific Corporation or its subsidiaries since \_\_\_ (the date of this Order) \_\_\_:

I have marked all statements below which have been true at all times since \_\_\_ (the date of this Order) \_\_\_:

- \_\_\_1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between purchases and sales by Georgia-Pacific Corporation or its subsidiaries, and such company.
- \_\_\_2. I have not prepared or maintained statistical data which compared or otherwise related purchases by Georgia-Pacific Corporation or its subsidiaries from any company to sales by Georgia-Pacific Corporation or its subsidiaries to such company.
- \_\_\_3. I have not specified or recommended, because of the status of any company as an actual or potential customer, that purchases could or should be made from such company.
- \_\_\_4. I have not suggested or implied to another company that purchases by Georgia-Pacific Corporation or its subsidiaries might be conditioned upon or related to sales to such company.
- \_\_\_5. I have not engaged in purchasing on behalf of Georgia-Pacific Corporation or its subsidiaries, other than purchasing for resale.
- \_\_\_6. I have not in any manner obtained statistical data or other information which showed the amount of actual or potential purchases from any company by Georgia-Pacific Corporation or its subsidiaries, other than purchases for resale.
- \_\_\_7. I have not attended a meeting, a purpose of which was the discussion of the purchasing strategy of Georgia-Pacific Corporation or its subsidiaries, other than its strategy for purchasing for resale.
- \_\_\_8. To the best of my knowledge and belief, none of the individuals over whom I have had line authority since \_\_\_ (the date of this Order) \_\_\_ have since such time engaged in any of the activities set out above.

\_\_\_\_\_  
(Signature)

1428

Decision and Order

City of \_\_\_\_\_

State of \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1972.

\_\_\_\_\_  
(Notary Public)

ATTACHMENT E

Name and address:

Positions held, with dates, with Georgia-Pacific Corporation or its subsidiaries since \_\_\_\_\_ (the date of this Order) \_\_\_\_\_ :

I have marked all statements below which have been true at all times since \_\_\_\_\_ (the date of this Order) \_\_\_\_\_ :

- \_\_\_\_1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between purchases and sales by Georgia-Pacific Corporation or its subsidiaries and such company.
- \_\_\_\_2. I have not prepared or maintained statistical data which compared or otherwise related sales by Georgia-Pacific Corporation or its subsidiaries to any company with purchases by Georgia-Pacific Corporation or its subsidiaries from such company.
- \_\_\_\_3. I have not specified or recommended, because of the status of any company as an actual or potential supplier, that sales could or should be made to such company.
- \_\_\_\_4. I have not suggested or implied to another company that purchases by Georgia-Pacific Corporation or its subsidiaries might be conditioned upon or related to sales to such company.
- \_\_\_\_5. I have not engaged in sales or marketing on behalf of Georgia-Pacific Corporation or its subsidiaries, other than the sale of items purchased for resale.
- \_\_\_\_6. I have not in any manner obtained statistical data or other information which showed the amount of actual or potential sales to any company by Georgia-Pacific Corporation or its subsidiaries, other than sales of items purchased for resale.
- \_\_\_\_7. I have not attended a meeting, a purpose of which was the discussion of the strategy of Georgia-Pacific Corporation or its subsidiaries for obtaining sales, other than its strategy for selling items purchased for resale.
- \_\_\_\_8. To the best of my knowledge and belief, none of the individuals over whom I have had line authority since \_\_\_\_\_ (the date of this Order) \_\_\_\_\_ have since such time engaged in any of the activities set out above.

\_\_\_\_\_  
(Signature)

City of \_\_\_\_\_

State of \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1972.

\_\_\_\_\_  
(Notary Public)

*Appendix 1*

Executive personnel of respondent

*Appendix 2*

Personnel who are primarily and directly engaged in obtaining sales on behalf of respondent. Place asterisks before all positions which are not required to file affidavits.

*Appendix 3*

Personnel who are primarily and directly engaged in purchasing on behalf of respondent. Place asterisks before all positions which are not required to file affidavits.

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IN THE MATTER OF  
BENTON & BOWLES, INC.

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

*Docket C-2403. Complaint, May 22, 1973—Decision, May 22, 1973.*

Consent order requiring a New York City advertising agency, among other things to cease misrepresenting the medicinal or therapeutic qualities of a non-prescription internal analgesic product, "Vanquish," and misrepresenting certain scientific facts with regard to the product in advertising.

COMPLAINT

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

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

1. "Commerce" means commerce as defined in the Federal Trade Commission Act.
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act.

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

place of business located at 909 Third Avenue, in the city of New York, State of New York.

PAR. 3. Respondent Benton & Bowles, Inc., for all times relevant to this complaint has been an advertising agency of Sterling Drug Inc., and for all times relevant to this complaint, has prepared and placed for publication advertising material, including but not limited to the advertising referred to herein, to promote the sale of "Vanquish," a non-prescription internal analgesic preparation, manufactured by Sterling Drug Inc., which comes within the classification of a drug as the term "drug" is defined in the Federal Trade Commission Act.

PAR. 4. The designation, directions for use and active ingredients for Vanquish are as follows:

*Active Ingredients:*

Aspirin

Caffeine

Acetaminophen

Magnesium Hydroxide

Aluminum Hydroxide (Dried Gel)

*Dosage:* 2 caplets with water. Can be repeated every 4 hours if needed, up to 12 caplets per day.

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

PAR. 6. Typical of the statements and representations made in the advertisements, but not all inclusive thereof, are the following:

A. (3 tablets are shown with 1 caplet of Vanquish)

For your headache pain, here are your major choices. This leading extra strength product has no buffers. This leading buffered product has no extra strength. This leading pain reliever has strength but no buffers. Of all the

leading pain relievers you can buy, only Vanquish gives you extra strength and gentle buffers. Vanquish. The choice.

B. When you get a headache we think you should take Vanquish. And we'll show you why in a head to head comparison. This is Vanquish. It gives you extra strength and gentle buffers. And its the only leading pain reliever that does. This is a leading extra strength product. It has no buffers. And there are no buffers in this other extra strength product either. This leading buffered product comes without extra strength. We think your headache deserves extra strength and you deserve gentle buffers.

C. Vanquish is different. It gives you proven effectiveness of Aspirin as in this tablet plus extra medication as in these. But it also includes two gentle buffers \*\*\* with Vanquish the only one.

PAR. 7. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication by respondent Benton & Bowles, Inc., that it has been established that:

A. A recommended dose of Vanquish is more effective for the relief of pain that a recommended dose of aspirin or buffered aspirin.

B. Because Vanquish contains "gentle buffers" it will result in less gastric discomfort than any other non-prescription internal analgesic not containing buffers.

PAR. 8. In truth and in fact neither of said representations has been established. There exists, rather, a substantial question recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug as to the validity of such representations.

PAR. 9. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication by respondent Benton & Bowles, Inc., that:

A. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

B. Vanquish will cause gastric discomfort less frequently than any other non-prescription internal analgesic not containing buffers.

PAR. 10. At the time respondent made the representations in Paragraph Nine above, there existed a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug as to the validity of such representations.

PAR. 11. Respondent Benton & Bowles, Inc., advertised Vanquish without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are

well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine by persons with certain medical conditions can be injurious to health. In addition, the use of aspirin in large quantities or with frequency by some persons may cause undesirable side effects. Thus, respondent has failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 12. The advertisements referred to in Paragraph Six above were, and are, misleading in material respects, as alleged in Paragraphs Eight, Ten and Eleven and constituted and now constitute false advertisements.

PAR. 13. The use by respondent of the aforesaid deceptive statements, representations, or claims, and the dissemination of the aforesaid false advertisements has had and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements, representations, or claims were and are true and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

PAR. 14. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Benton & Bowles, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair methods of competition in commerce and 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 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 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 Benton & Bowles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 909 Third Avenue, New York City, 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 Benton & Bowles, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any controlled corporation, wholly-owned subsidiary or division in connection with the advertising, offering for sale, sale or distribution of Vanquish in the United States, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents, directly or by implication, that a recommended dose of Vanquish is more effective in relief of pain than a recommended dose of any aspirin or buffered aspirin.

2. Represents, directly or by implication, that

Vanquish will cause gastric discomfort less frequently than any aspirin or buffered aspirin.

3. Fails to disclose that Vanquish contains aspirin and caffeine.

B. Disseminating, or causing the dissemination of, any advertisement by any means which contains statements which are inconsistent with, negate or contradict any disclosures required by subparagraph A above, or in any way obscure the meaning of such disclosure;

C. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in subparagraphs A(1) and A(2) above or fails to include the disclosures required in subparagraph A(3) above.

## II

*It is further ordered,* That respondent Benton & Bowles, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any controlled corporation, wholly-owned subsidiary, or division, in connection with the advertising, offering for sale, sale or distribution of any non-prescription internal analgesic product in the United States do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents directly or by implication, that a claim concerning the comparative performance, the comparative effectiveness, or the comparative freedom from side effects of such product has been established, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such claim, unless the respondent can establish that it neither knew nor had reason to know of the existence of such substantial question; or

2. Refers to the ingredients aspirin or caffeine by any word or words other than their common, or usual name,

unless (a) it is clearly and conspicuously disclosed that such word or words refer to aspirin or caffeine, and, (b) it is clearly and conspicuously disclosed that the only active analgesic ingredient in such product is aspirin and the only stimulant ingredient in such product is caffeine, if such is the case; or

3. Fails to disclose that the product contains aspirin or caffeine, if such is the case, *Provided, however*, That Paragraphs A(2) and (3) of Part II of this order shall not take effect or be binding unless or until order provisions embodying these same disclosure requirements become final with respect to Sterling Drug Inc., co-respondent joined in the complaint issued in [File No.] 722 3221.

B. Disseminating, or causing the dissemination, of, any advertisement by any means, which contains statements which are inconsistent, with, negate or contradict any disclosures required by Paragraph A above, or in any way obscure the meaning of such disclosures;

C. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph A(1) and A(2) above, or which fails to disclose the disclosures required in Paragraph A(2) and A(3) above.

D. Making any representation, directly or by implication, concerning the comparative performance, the comparative effectiveness, or the comparative freedom from side effects of such product, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such analgesic products, as to the validity of such representation, unless the respondent can establish that it neither knew nor had reason to know of the existence of such substantial question.

E. Making any statement or representations, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, unless there exists competent and reliable evidence to provide a reasonable basis for such representations. Notwithstanding the foregoing it shall be a complete defense in any enforcement proceeding instituted hereunder for said

respondent to establish it neither knew nor had reason to know that said evidence was not competent and reliable.

F. *Provided, however*, That Paragraphs A(1) and D of part II of the order shall not take effect or be binding unless or until an order provision embodying the "Standard" set forth in Paragraphs A(1) and D, or any modification thereof, becomes final with respect to Sterling Drug Inc., co-respondent joined in the complaint issued in [File No.] 722 3221. *Provided further*, That should said order against Sterling Drug Inc., contain a standard different or modified in any respect from the "Standard" set forth in said paragraphs, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs. For the purpose of this Paragraph F the "Standard" shall mean "when there exists a substantial question, recognized by experts, qualified by scientific training and experience to evaluate the safety and efficacy of such non-prescription internal analgesic product." Furthermore, the defense of "knew or had reason to know" as set forth in Paragraphs A(1) and D of this order shall not be revised or modified or otherwise affected, even though the standard finally utilized is different or modified in any respect from the "Standard" set forth in said paragraphs.

G. *Provided further*, That the proscriptions of this order shall apply only to claims for the prevention, treatment, or relief of pain, but not to claims for the relief of minor pain or discomfort that is incidental to the elimination, by the product, of an underlying condition causing such minor pain or discomfort, such as a cough or stuffy nose.

### III

*It is further ordered*, That 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 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 changes in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

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IN THE MATTER OF  
RELYON, INC., ET AL.

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

*Docket C-2404. Complaint, May 22, 1973—Decision, May 22, 1973.*

Consent order requiring two related Cleveland, Ohio, sellers and distributors of furniture, 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.

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 the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Relyon, Inc., a corporation, and B. W. & W., Inc., a corporation, trading and doing business as Relyon, Inc., and Gerald Blank, individually and as an officer of said corporations, and E. Richard Weitz, individually and as an officer of B. W. & W., Inc., and Myron Weissman, individually and as an officer of B. W. & W., Inc., 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 Relyon, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of

business located at 1837-41 East 55th Street, in the city of Cleveland, State of Ohio.

Respondent B. W. & W., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 4141 East 131st Street, in the city of Cleveland, State of Ohio.

Respondent Gerald Blank is an individual and is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of Relyon, Inc.

Respondent E. Richard Weitz is an individual and is an officer of B. W. & W., Inc. He formulates, directs and controls the acts and practices of B. W. & W., Inc., including the acts and practices hereinafter set forth. His address is the same as that of B. W. & W., Inc.

Respondent Myron Weissman is an individual and is an officer of B. W. & W., Inc. He formulates, directs and controls the acts and practices of B. W. & W., Inc., including the acts and practices hereinafter set forth. His address is the same as that of B. W. & W., Inc.

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

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale, sale and distribution of furniture to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents arrange for the extension of consumer credit or offer to extend or arrange for the extension of such 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 blank Purchase Money Security Agreement and Note, hereinafter referred to as the "Agreement." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the agreement, respondents:

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

(2) Fail to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z;

(3) Fail to disclose the cash price of the property or service purchased and to describe that amount as the "cash price," as defined in Section 226.2(i) of Regulation Z, as prescribed by Section 226.8(c)(1) of Regulation Z;

(4) Fail to disclose the downpayment in money made in connection with the credit sale, and to describe the amount as the "cash downpayment," as prescribed by Section 226.8(c)(2) of Regulation Z;

(5) Fail to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as prescribed by Section 226.8(c)(2) of Regulation Z;

(6) Fail to disclose the sum of the "cash downpayment" and "trade-in" and to describe that sum as the "total downpayment," as prescribed by Section 226.8(c)(2) of Regulation Z;

(7) Fail 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 prescribed by Section 226.8(c)(3) of Regulation Z;

(8) Fail to disclose all charges which are not part of the "finance charge," but are included in the amount financed and to itemize each such charge individually, as prescribed by Section 226.8(c)(4) of Regulation Z;

(9) Fail to disclose the sum of the "unpaid balance of cash price" and all other amounts itemized individually which are part of the amount financed, but which are not included in the "finance charge" and to describe that amount as the "unpaid balance," as prescribed by Section 226.8(c)(5) of Regulation Z;

(10) Fail to disclose the amount of credit extended and to describe that amount as the "amount financed," as prescribed by Section 226.8(c)(7) of Regulation Z;

(11) Fail to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as prescribed by Section 226.8(c)(8)(i) of Regulation Z;

(12) 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z;

(13) Fail to make consumer credit cost disclosures heretofore set forth in this paragraph before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by Section 226.8 are made, as prescribed by Section 226.8(a) of Regulation Z.

PAR. 5. By the aforesaid failure to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth In Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with 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 Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted 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 Relyon, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1837-41 East 55th Street, in the city of Cleveland, State of Ohio.

Respondent B. W. & W., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 4141 East 131st Street, in the city of Cleveland, State of Ohio.

Respondent Gerald Blank is an individual and is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, and his address is the same as that of Relyon, Inc.

Respondents E. Richard Weitz and Myron Weissman are individuals and are officers of B. W. & W., Inc. They formulate, direct and control the policies, acts and practices of B. W. & W., Inc., and their address is the same as that of said corporation.

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

#### ORDER

*It is ordered,* That respondents Relyon, Inc., a corporation, B. W. & W., Inc., a corporation, trading and doing business as Relyon, Inc., and their officers, and respondent Gerald Blank, individually and as an officer of said corporations, and respondents E. Richard Weitz and Myron Weissman, individually and as officers of B. W. & W., Inc., respondents' successors and assigns 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,

computed in accordance with Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z;

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

(3) Failing to disclose the cash price of the property or service purchased and to describe that amount as the “cash price,” as defined in Section 226.2(i) of Regulation Z, as prescribed by Section 226.8(c)(1) of Regulation Z;

(4) Failing to disclose the downpayment in money made in connection with the credit sale, and to describe that amount as the “cash downpayment,” as prescribed by Section 226.8(c)(2) of Regulation Z;

(5) Failing to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the “trade-in,” as prescribed by Section 226.8(c)(2) of Regulation Z;

(6) Failing to disclose the sum of the “cash downpayment” and “trade-in,” and to describe that sum as the “total downpayment,” as prescribed by Section 226.8(c)(2) of Regulation Z;

(7) Failing 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 prescribed by Section 226.8(c)(3) of Regulation Z;

(8) Failing to disclose all charges which are not part of the “finance charge,” but are included in the amount financed and to itemize each such charge individually, as prescribed by Section 226.8(c)(4) of Regulation Z;

(9) Failing to disclose the sum of the “unpaid balance of cash price” and all other amounts itemized individually which are part of the amount financed, but which are not included in the “finance charge” and to describe that amount as the “unpaid balance,” as prescribed by Section 226.8(c)(5) of Regulation Z;

(10) Failing to disclose the amount of credit extended, and to describe that amount as the “amount financed,” as prescribed by Section 226.8(c)(7) of Regulation Z;

(11) Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the “finance charge,” as prescribed by Section 226.8(c)(8)(i) of Regulation Z;

(12) 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z;

(13) Failing to make consumer credit cost disclosures before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by Section 226.8 are made, as prescribed by Section 226.8(a) of Regulation Z;

(14) Failing, in any consumer credit transaction or advertisement, 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 Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

*It is further ordered,* That respondents prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a completed copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to each operating division and 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 the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged, as well as a description of their duties and responsibilities.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed changes 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 changes in the corporations which may affect compliance obligations arising out of this order.

*It is further ordered,* That respondents shall, within sixty (60) days after service upon them of this order, file with the

Commission a report in writing setting forth, in detail, the manner and form in which they have complied with the order to cease and desist contained herein.

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IN THE MATTER OF  
TYSONS CORNER REGIONAL SHOPPING CENTER,  
ET AL.

*Docket 8886. Opinion and Order, May 24, 1973.*

Order and opinion denying respondents' application for review of the administrative law judge's order of March 1, 1973, and their motion for expedited consideration and for hearing on the application, on the ground that no due process rights have been violated.

OPINION OF THE COMMISSION

This matter is before the Commission upon an application by respondents, filed April 4, 1973, for permission to file an interlocutory appeal to review a ruling of the administrative law judge. This application was filed pursuant to Section 3.23(b) of the Commission's Rules of Practice for Adjudicative Proceedings. Review is sought of the administrative law judge's "Order Ruling on Jurisdictional Question" issued on March 1, 1973. The respondents have also obtained from the administrative law judge a determination that his ruling involves a controlling question of policy as to which there is substantial grounds for difference of opinion, and that an immediate appeal to the Commission may materially advance the ultimate termination of the litigation. On April 11, 1973, a response to respondents' application was filed by complaint counsel.

I

Respondents have raised, as an affirmative defense in the present proceeding, the claim that the participation of Alan S. Ward, Director of the Bureau of Competition, in the investigation, pre-complaint and adjudicatory proceedings is contrary to Section 0.735-10 of the Commission's rules. They contend that the Commission's failure to enforce this section governing the conduct of its employees is violative of respondents' due process rights and, therefore, justifies dismissal of the complaint.

Specifically, respondents assert that Mr. Ward's involvement

as a member of a private law firm in a related private antitrust suit against the respondents,<sup>1</sup> which was settled prior to his assumption of his present position with the Commission, should have disqualified him from exercising his normal responsibilities as bureau director with respect to the present case. The failure of Mr. Ward to disqualify himself and the continuing refusal of the Commission to disqualify him, respondents allege, are actions which, in the language of Section 0.735-10 "might result in, or create the appearance of . . . [l]osing complete independence on impartiality; [or] affecting adversely the confidence of the public in the integrity of the Government." The claim raised by respondents before the administrative law judge is, by respondents' admission<sup>2</sup> identical to that contained in their motion of February 15, 1972, requesting the Commission to withdraw the proposed complaint issued under Part II of the Commission's rules and to assign the investigation to personnel not under Mr. Ward's supervision. On May 3, 1972, the Commission denied respondents' motion.

Thereafter, the Commission, fully aware of respondents' contention, issued the complaint in this matter under Part III of its rules. Three of the present respondents subsequently sought to enjoin the adjudicatory proceeding on the same grounds now urged for dismissal. On July 13, 1972, the District Court of the District of Columbia denied respondents' motion for a preliminary injunction and dismissed the case holding, *inter alia* that the procedural infirmity claimed by respondents did not warrant district court intervention in the uncompleted administrative proceeding and that the issues raised by respondents could be presented on judicial review.

## II

When respondents, for the third time, raised the identical issue before the administrative law judge, he held in his ruling of March 1, 1973, that the due process issue involving the purported violation of Rule 0.735-10 was beyond his jurisdiction. He noted that the rule encompassed only matters of employee conduct, which are within the sole administrative discretion of the Commission. Furthermore, he deemed the issue raised by respondents essentially a challenge to the Commission's

<sup>1</sup> *Dalmo Sales Co. v. Tysons Corner Regional Shopping Center*, 308 F. Supp. 988 (D.D.C. 1970), *aff'd*, 429 F.2d 206 (D.C. Cir. 1970).

<sup>2</sup> Application for Review of "Order On Jurisdictional Question," p. 2; Answer to Application for Review of Order on Jurisdictional Question, p. 8.

determinations that there was "reason to believe" that respondents had violated the Federal Trade Commission Act and that the issuance of the complaint would be "to the interest of the public," the statutory standards for issuance of complaints under Section 5(b) of the Federal Trade Commission Act. The administrative law judge concluded that the matters raised by respondents here were so intertwined with the Commission's judgement that they were vested entirely within the discretion of the Commission, and that he lacked jurisdiction to consider such issues.

The ruling of the administrative law judge on this issue is correct and it is affirmed.

On the merits of respondents' claim, which we, in our discretion may reach on this application even though it has not been certified, we hold that, even assuming the validity of respondents' allegations, no due process rights have been violated. Moreover, in the circumstances of this case, the alleged rule violations cannot be deemed to have undermined the independence of the Commission's decision to issue the Part III complaint. One is hard-pressed to find any merit in respondents' contention that the violation of a Commission regulation governing the conduct of its employees, dealing with appearances rather than prejudicial misconduct, and existing solely for the benefit of the Government,<sup>3</sup> can, standing alone, rise to an infringement of due process rights. Section 0.735-10 is obviously a "housekeeping" rule<sup>4</sup> designed to preserve the integrity of the Commission by establishing "unusually high standards of honesty, integrity, and conduct" even to the point of prohibiting actions "which might result in, or create the appearance of" improper conduct. This rule is designed to promote public confidence in the Commission, and violations therefore may subject an employee to disciplinary action through internal personnel procedures as prescribed in Section 0.735-7 of the rules; but we fail to see how the mere appearance of impropriety, without more, could prejudice respondents. Yet, respondents have consistently maintained that they are not questioning Mr. Ward's professional competency, dedication, or integrity,<sup>5</sup> but are merely concerned with the appearance of a lack of impartiality on the part of Mr. Ward.

<sup>3</sup> See, *Exchange Nat'l. Bank of Chicago v. Abramson*, 295 F. Supp. 87 (D. Minn. 1969).

<sup>4</sup> The line of cases holding that agencies must abide by their own procedural rules, e.g., *Vitarelli v. Seaton*, 359 U.S. 535 (1959) is therefore inapposite.

<sup>5</sup> Memorandum in Support of Motion of Proposed Respondents to Withdraw the Proposed Complaint, p. 11.

Interpreting respondents' claim, in the broadest sense, it is really no more than an allegation of staff bias, which, unlike Commissioner bias, has never been held to constitute a denial of due process or a defense to a complaint. *Maremont Corp. v. FTC*, 431 F.2d 124, 128 (7th Cir. 1970). In fact, we would be surprised if attorneys charged with prosecution of any matter in any agency could consistently maintain a position of complete impartiality much less an appearance of total impartiality.

Bias presents a due process issue only when it undermines the independence of the Commission's decision making process. Traditionally, Commission decisions to issue a complaint and the requisite determinations that there is reason to believe that a violation has occurred and that the proceeding would be in the public interest are made independently by the Commission on the basis, not only of the staff's recommendations, but also of its own review of the evidence uncovered in the investigation. In the circumstances surrounding the issuance of the two complaints in the present case, there is no indication whatsoever that the normal complaint issuance procedure employed by the Commission was not followed. The Commission, in its letters to respondents on May 3, 1972, actually described in detail the procedure followed when the Part II complaint was issued. And, the Commission was fully aware of the allegations of respondents prior to the issuance of the Part III complaint. Absent a clear showing of prejudicial impropriety at the decision making level or proof that evidence had been tampered with, neither of which is even alleged by respondents, the Commission's decision to issue a complaint will not be disturbed and an evidentiary inquiry into the decision making processes of the Commission is inappropriate.

### III

The administrative law judge observed in his ruling that collateral proceedings against the Commission in the United States District Court for the District of Columbia had been commenced by three of the respondents after the issuance of the complaint here, seeking to enjoin any administrative action by the Commission. An Assistant United States Attorney represented the Commission. In his oral argument before the Court in opposition to the granting of an injunction counsel stated, *inter alia*:

[A]s the Court knows from the motion we have filed to dismiss, the position of

the defense is that, administrative remedies not having been exhausted, there is an absence of subject matter jurisdiction and at this time, then, pursuant to rule 12(h)(3), we would suggest that to the Court—that there would be an absence of subject matter jurisdiction.

The Plaintiffs certainly have the opportunity to pursue their argument with respect to the impropriety of Mr. Ward's participation and any taint that might have accrued, *and to develop the record at the hearing level*, and in the event that an adverse decision might be made on that point, to pursue it before the Commission and even, then, should they not prevail either on the point, they will have recourse to judicial review. [Transcript, p. 21 (emphasis added)].

The administrative law judge in his ruling noted that it “is the Commission which must define whatever obligations were assumed as a result of those representations.” It was on this basis that the determination required by Section 3.23(b) as a prerequisite for a request to file an interlocutory appeal was subsequently made by the administrative law judge.

Respondents interpret the emphasized portion of the counsel's statement to the District Court as a promise to them that they would be afforded the opportunity to introduce evidence in the record on this issue before the administrative law judge. Respondents, we think read too much into the statement. Clearly, counsel was merely discussing the general rule of law that a party must exhaust administrative remedies before resorting to the courts.

That the Assistant United States Attorney's representation was so interpreted by the Court is apparent from the detailed findings and conclusions the District Court filed with its order dismissing the collateral action for lack of jurisdiction over the subject matter. And neither the judge's statements at the conclusion of the hearing nor his detailed findings and conclusions contain any reference to any Commission obligation, express or implied, to grant respondents an evidentiary hearing on this issue. In fact, the Court in its conclusions of law expressly held: “The issue in question [*i.e.*, Mr. Ward's participation] can be raised by plaintiffs on judicial review of a final Commission order, if a final order is issued in the administrative proceedings.” Certainly, we cannot interpret the District Court's decision to require an evidentiary hearing when the defense raised by respondents is legally unsupportable.

In view of the foregoing, the Commission has determined that respondents' Application for Review of “Order on Jurisdictional Question” should be denied. An appropriate order will be entered.



Order

82 F.T.C.

ORDER DENYING APPLICATION FOR INTERLOCUTORY REVIEW AND  
DENYING MOTION FOR EXPEDITED CONSIDERATION AND HEARING

Upon consideration of the Application for Review of the administrative law judge's order of March 1, 1973, filed by respondents on April 4, 1973, and Motion for Expedited Consideration and for Hearing on their Application for Review filed by respondents May 16, 1973, and for the reasons stated in the accompanying opinion,

*It is ordered*, That the Application for Review be, and it hereby is, denied.

*It is further ordered*, That the Respondents' Motion for Expedited Consideration and for Hearing on their Application for Review be, and it hereby is, denied.

Commissioner Dennison not participating.

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IN THE MATTER OF

## KOSCOT INTERPLANETARY, INC., ET AL.

*Docket 8888. Opinion and Order, May 24, 1973.*

Opinion and order granting complaint counsel's motion for leave to file a supplemental answer and receiving and filing the supplemental answer to respondents' motion for withdrawal of the case from the adjudication process; and denying respondents' said motion for withdrawal from adjudication.

## OPINION OF THE COMMISSION

This matter is before the Commission upon a certification by the administrative law judge filed with the Commission on March 30, 1973, and consists of a "Motion for an Order Withdrawing this Case from the Adjudication Process" filed with the administrative law judge on March 5, 1973, by Koscot Interplanetary, Inc., Glenn W. Turner Enterprises, Inc., and four of the remaining seven individual respondents. The motion was made under Rule 2.34(d) of the Commission's Rules of Practice and the purpose for the withdrawal is to permit the negotiation of a settlement by the entry of a consent order. Complaint counsel, on March 15, 1973, filed an answer in opposition to the motion. The administrative law judge recognized in his order certifying the matter to the Commission that he has no authority to rule upon a motion of this character. He recommends in his order, however, that the motion be

granted by the Commission. After the certification of the motion to the Commission, complaint counsel on April 11, 1973, filed with the Commission a motion for leave to file a supplemental answer which was attached to the motion. The motion avers that the supplemental answer deals with events which occurred after complaint counsel's answer to respondents' motion was filed.<sup>1</sup>

## I

The four individual and two corporate respondents base their motion to have the case withdrawn from adjudication upon developments in the pending case, *In re Glenn W. Turner Enterprises* (MDL Dkt. No. 109) No. Misc. 5670, in the United States District Court for the Western District of Pennsylvania and their willingness now to enter into a consent order containing the prohibitions in the Notice Order issued with the complaint in the proceeding before the Commission except a provision relating to restitution which the complaint states may be included in the final order if warranted by the facts. These respondents contend that the District Court litigation now pending will result in adequate restitution, thereby making unnecessary any such provision in any order of the Commission.

On May 7, 1973, the United States Court of Appeals for the Third Circuit entered orders staying all proceedings in the District Court, except any settlement negotiations conducted among the parties, pending disposition by the Court of Appeals of petitions filed with it challenging certain actions of the District Court.

## II

The District Court papers attached to respondents' motion show that the case is a consolidation of numerous private suits and class actions brought against respondents and others by separate plaintiffs. It is alleged that the plaintiffs purchased contracts or agreements based on the defendants' misrepresentations. The jurisdiction of the District Court rests, in part, upon the Federal Securities Acts. On the basis of findings that the separate suits involve common questions of fact, the Judicial Panel on Multidistrict Litigation under 28 U.S.C. 1407

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<sup>1</sup> No objection to complaint counsel's motion has been made by respondents. The motion is granted and the supplemental answer and papers attached thereto will be considered. Complaint counsel has filed copies, without objections by respondents, of court orders entered at various times relating to the class action relied upon by respondents. These court orders will also be considered.

ordered the various suits transferred and consolidated in the class action proceeding now pending in the District Court.

The District Court in its memorandum and order filed January 15, 1973, and supplemental orders has not enjoined the Commission from going forward with this administrative proceeding. Indeed, the respondents in their motion, while broadly construing the Court's orders, do not contend that the Court has enjoined any aspect of the proceeding before the Commission. There is no conflict between the Court litigation and the proceeding before the Commission. The Court action is to vindicate private individual rights; the Commission proceeding is to enforce the Federal Trade Commission Act.

### III

Respondents in their motion and supporting papers have failed to demonstrate sufficient reason or facts to warrant the Commission foreclosing at this time the inclusion of an appropriate restitution provision in any cease-and-desist order. The proposed settlements in the pending litigation do not purport to require all of the respondents to disburse to their customers all funds retained by them as a result of alleged violations of Section 5 of the Federal Trade Commission Act. Until there is a clear showing that respondents have accomplished disbursement of all such funds, it is premature at this time to determine that no provision for restitution should be included in any Commission order.

The violation for which restitution in some instances is an appropriate corrective action occurs when the seller's retention of its customers' money or property is an unfair trade practice, in and of itself, in violation of the Federal Trade Commission Act. *Curtis Publishing Co.*, 3 Trade Reg. Rep. ¶19,719, p. 21,759 (D. 8800, 1971 [78 F.T.C. 1472]); *Universal Credit Acceptance Corp.*, 3 Trade Reg. Rep. ¶20,240, p. 22,242 (D. 8821, 1973 [See p. 570 herein]). If the private parties involved agree to an approved settlement, they will be bound by its terms, but this does not bar a restitution provision in a cease and desist order by the Commission if one is issued. An effective remedy may require complete disbursement of such funds to the victims of the unlawful practices up to the amount of their actual payments, and the possibility that this may result in some parties receiving funds in addition to amounts they have received in settlement of their claims does not prevent such restitution. The public policy

expressed in the Federal Trade Commission Act is, of course, paramount. *Universal Credit Acceptance Corp., supra*, at pp. 22,248, 22,251.

For the reasons stated, exceptional and unusual circumstances do not exist which would justify withdrawing this matter from adjudication and respondents have not shown good cause for withdrawal as is required by Rule 2.34(d) of the Commission's Rules of Practice.

ORDER DENYING MOTION TO WITHDRAW FROM ADJUDICATION AND  
GRANTING MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER

Upon consideration of respondents' Motion for an Order Withdrawing this Case from the Adjudication process filed March 5, 1973, and certified to the Commission by the administrative law judge on March 30, 1973, and upon consideration of complaint counsel's Motion for Leave to file Supplemental Answer in further response to respondents' motion, the Commission, for the reasons set forth in the accompanying opinion, has determined that respondents' motion should be denied and complaint counsel's motion should be granted. Accordingly,

*It is ordered*, That the motion filed by respondents for an order withdrawing this matter from the adjudication process be, and it hereby is, denied.

*It is further ordered*, That the motion filed by complaint counsel for leave to file a supplemental answer be, and it hereby is, granted and the supplemental answer is received and filed.

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IN THE MATTER OF

GARY R. GREEN TRADING AS GREEN'S JEWELERS

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

*Docket C-2405. Complaint, May 25, 1973—Decision, May 25, 1973.*

Consent order requiring a Cleveland, Ohio, seller and distributor of jewelry, household furnishings and other merchandise, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, credit, such information as required by Regulation Z of the said Act.

## COMPLAINT

Pursuant to the provision of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gary R. Green, an individual trading and doing business as Green's Jewelers, 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 Gary R. Green is an individual trading and doing business as Green's Jewelers, with his principal office and place of business located at 726 Euclid Avenue, in the city of Cleveland, State of Ohio.

PAR. 2. Respondent is now, and for sometime in the past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry, home furnishings and other types of merchandise to the public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent arranges for the extension of consumer credit or offers to extend or arrange for the extension of such 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 his business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused, and is causing, customers to execute a binding retail installment contract and security agreement, hereinafter referred to as the "Contract."

By and through the use of the Contract, respondent:

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

(2) Fails to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z;

(3) Fails to disclose the cash price of the property or service

purchased and to describe that amount as the "cash price," as defined in Section 226.2(i) of Regulation Z, as prescribed by Section 226.8(c)(1) of Regulation Z;

(4) Fails to disclose the downpayment in money made in connection with the credit sale, and to describe that amount as the "cash downpayment," as prescribed by Section 226.8(c)(2) of Regulation Z;

(5) Fails to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as prescribed by Section 226.8(c)(2) of Regulation Z;

(6) Fails to disclose the sum of the "cash downpayment" and "trade-in," and to describe that sum as the "total downpayment," as prescribed by Section 226.8(c)(2) of Regulation Z;

(7) 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 prescribed by Section 226.8(c)(3) of Regulation Z;

(8) Fails to disclose all charges which are not part of the "finance charge," but are included in the amount financed and to itemize each such charge individually, as prescribed by Section 226.8(c)(4) of Regulation Z;

(9) Fails to disclose the sum of the "unpaid balance of cash price" and all other amounts itemized individually which are part of the amount financed, but which are not included in the "finance charge" and to describe that amount as the "unpaid balance," as prescribed by Section 226.8(c)(5) of Regulation Z;

(10) Fails to disclose the amount of credit extended and to describe that amount as the "amount financed," as prescribed by Section 226.8(c)(7) of Regulation Z;

(11) Fails to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as prescribed by Section 226.8(c)(8)(i) of Regulation Z;

(12) 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z;

(13) Fails to make consumer credit cost disclosures when any existing extension of credit is refinanced, or two or more existing extensions of credit are consolidated, or an existing obligation is

increased, as prescribed by Section 226.8(j) of Regulation Z;

(14) Fails to make consumer credit cost disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z;

(15) Fails to make consumer credit cost disclosures heretofore set forth in this paragraph before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by Section 226.8 are made, as prescribed by Section 226.8(a) of Regulation Z.

PAR. 5. By the aforesaid failure to make disclosures, respondent has failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failure to comply with Regulation Z constitutes 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 Cleveland 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 Gary R. Green is an individual trading and doing business as Green's Jewelers, with his principal office and place of business located at 726 Euclid Avenue, in the city of Cleveland, State of 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

*It is ordered,* That respondent, Gary R. Green, an individual trading and doing business as Green's Jewelers, or any other name or names, his successors and assigns, and respondent's 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, computed in accordance with Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z;

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

(3) Failing to disclose the cash price of the property or service purchased, and to describe that amount as the "cash price," as defined in Section 226.2(i) of Regulation Z, as prescribed by Section 226.8(c)(1) of Regulation Z;

(4) Failing to disclose the downpayment in money made in connection with the credit sale, and to describe that amount as the "cash downpayment," as prescribed by Section 226.8(c)(2) of Regulation Z;

(5) Failing to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as prescribed by Section 226.8(c)(2) of Regulation Z;

(6) Failing to disclose the sum of the "cash downpayment"



and "trade-in," and to describe that sum as the "total downpayment," as prescribed by Section 226.8(c)(2) of Regulation Z;

(7) Failing 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 prescribed by Section 226.8(c)(3) of Regulation Z;

(8) Failing to disclose all charges which are not part of the "finance charge," but are included in the amount financed and to itemize each such charge individually, as prescribed by Section 226.8(c)(4) of Regulation Z;

(9) Failing to disclose the sum of the "unpaid balance of cash price" and all other amounts itemized individually which are part of the amount financed, but which are not included in the "finance charge" and to describe that amount as the "unpaid balance," as prescribed by Section 226.8(c)(5) of Regulation Z;

(10) Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as prescribed by Section 226.8(c)(7) of Regulation Z;

(11) Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as prescribed by Section 226.8(c)(8)(i) of Regulation Z;

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

(13) Failing to make consumer credit cost disclosures when any existing extension of credit is refinanced, or two or more existing extensions of credit are consolidated, or an existing obligation is increased, as prescribed by Section 226.8(j) of Regulation Z;

(14) Failing to make consumer credit cost disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z;

(15) Failing to make consumer credit cost disclosures before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by Section 226.8 are made, as prescribed by Section 226.8(a) of Regulation Z;

(16) Failing, in any consumer credit transaction or

advertisement, 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 Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

*It is further ordered,* That respondent prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

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

*It is further ordered,* That the 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.

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IN THE MATTER OF

PAY LESS DRUG STORES NORTHWEST, INC., ET AL.

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

*Docket C-2406. Complaint, May 25, 1973—Decision, May 25, 1973.*

Consent order requiring a Portland, Oregon, based operator of 45 retail stores in four Northwestern States, among other things to cease making deceptive safety claims for safety helmets and requiring respondent to make cash refunds to deceived purchasers who return the helmets.

## 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 Pay Less Drug Stores Northwest, Inc., House of Values, Incorporated, House of Values of Bremerton, Inc., Pay Less Drug Store of Mt. Vernon, Inc., Eureka Pay Less For Drugs Company, Pay Less Drug Store of Coos Bay, Inc., Pay Less Drug Store of Pendelton, Inc., and Pay Less For Drugs, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it now 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 Pay Less Drug Stores Northwest, Inc., 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 234 NW 5th Avenue, Portland, Oregon. Said corporate respondent prepares advertising for and dominates and controls the acts and practices of its wholly-owned subsidiaries House of Values, Incorporated, House of Values of Bremerton, Inc., Pay Less Drug Store of Mt. Vernon, Inc., Eureka Pay Less For Drugs Company, Pay Less Drug Store of Coos Bay, Inc., Pay Less Drug Store of Pendelton, Inc., Pay Less For Drugs, Inc., including the acts and practices hereinafter set forth.

Respondent House of Values, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 3685 Duwamish Avenue South, Seattle, Washington.

Respondent House of Values of Bremerton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office located at 3685 Duwamish Avenue South, Seattle, Washington. Its principal place of business is located at 624 Fourth Street, Bremerton, Washington.

Respondent Pay Less Drug Store of Mt. Vernon, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office located at 3685 Duwamish Avenue South, Seattle, Washington.

Its principal place of business is located at 101 East College Way, Mt. Vernon, Washington.

Respondent Eureka Pay Less For Drugs Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 800 West Harris Street, Eureka, California.

Respondent Pay Less Drug Store of Coos Bay, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office located at 243 NW 5th Avenue, Portland, Oregon. Its principal place of business is located at 2nd and West Anderson Street, Coos Bay, Oregon.

Respondent Pay Less Drug Store of Pendleton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office located at 243 NW 5th Avenue, Portland, Oregon. Its principal place of business is located at 301 South Main Street, Pendleton, Oregon.

Respondent Pay Less For Drugs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office located at 243 NW 5th Avenue, Portland, Oregon. Its principal place of business is located at 1209 Adams Street, La Grande, Oregon.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, and sale of general merchandise, including but not limited to safety helmets, to the public.

Respondent House of Values, Incorporated, House of Values of Bremerton, Inc., and Pay Less Drug Store of Mt. Vernon, Inc., are now and for some time last past have been doing business as House of Values. Eureka Pay Less For Drugs Company, Pay Less Drug Store of Coos Bay, Inc., Pay Less Drug Store of Pendleton, Inc., and Pay Less For Drugs, Inc., are now and for some time last past have been doing business as Pay Less Drug Stores.

PAR. 3. In the course and conduct of its business as aforesaid, respondent Pay Less Drug Stores Northwest, Inc., formulates, directs and controls, directly or through said subsidiary corporate respondents and other wholly-owned subsidiaries, the acts and practices of a chain of some forty-five (45) retail stores, located in four States of the United States. In the course and conduct of their business, respondents cause advertising mats, checks, sales memoranda, policy directives, and other documents

and communications to be transmitted, by the United States mails and other interstate mechanisms, to and from respondents' offices and said retail stores located in various States of the United States.

In the further course and conduct of their business, respondents sell and distribute said merchandise in commerce by causing said merchandise to be shipped from places of business of their several suppliers, located in various States of the United States, to storage points and to said retail stores for sale to the purchasing public, located in states other than those from which said shipments originate.

In the further course and conduct of their business, respondents also cause advertisements for said merchandise to be published in media of interstate circulation, all of which are designed and intended to induce persons to purchase said merchandise.

All of the aforesaid acts and practices have been engaged in, in the course and conduct of respondents' business and all such acts and practices have a close and substantial relationship to the interstate flow of respondents' business. Respondents now have, and at all times mentioned herein have had, a substantial and continuous course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of safety helmets, respondents have made certain statements and representations in advertising published in various newspapers with respect to said merchandise.

Typical and illustrative of said statements and advertising representations, but not all inclusive thereof, are the following:

El Dorado 77 Safety Helmet - Protect your head with the world's safest helmet!  
Titan Safety Helmet - Protect your head with the world's safest helmet!  
PIP Safety Helmet - Protect your head with the world's safest helmet!

PAR. 5. Through the use of the aforesaid statements, respondents have represented, directly or by implication, that the Lear-Siegler "El Dorado 77" (S-80 Spoiler), the American Safety Equipment Corporation "Titan" and the PIP (Pacific Interchange Parts) "GP-2" polycarbonate shell safety helmets are superior to all other safety helmets with respect to safety.

PAR. 6. In truth and in fact, the aforesaid safety helmets are not superior to all other safety helmets with respect to safety. 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 as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive representations set forth above, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of said products under the erroneous and mistaken belief that such statements and representations are true.

PAR. 8. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been and now are in substantial competition in commerce with corporations, firms, and individuals in the sale of products of the same kind and nature as that sold by said respondents.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and respondents' competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition 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 respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the

respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted 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 Pay Less Drug Stores Northwest, Inc., 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 234 NW 5th Avenue, Portland, Oregon. Said corporate respondent prepares advertising for and dominates and controls the acts and practices of its wholly-owned subsidiaries House of Values, Inc., House of Values of Bremerton, Inc., Pay Less Drug Store of Mt. Vernon, Inc., Eureka Pay Less For Drugs Company, Pay Less Drug Store of Coos Bay, Inc., Pay Less Drug Store of Pendleton, Inc., and Pay Less For Drugs, Inc.

Respondent House of Values, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 3685 Duwamish Avenue South, Seattle, Washington.

Respondent House of Values of Bremerton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office located at 3685 Duwamish Avenue South, Seattle, Washington. Its principal place of business is located at 624 4th Street, Bremerton, Washington.

Respondent Pay Less Drug Store of Mt. Vernon, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office located at 3685 Duwamish Avenue South, Seattle, Washington. Its principal place of business is located at 101 East College Way, Mt. Vernon, Washington.

Respondent Eureka Pay Less For Drugs Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 800 West Harris Street, Eureka, California.

Respondent Pay Less Drug Store of Coos Bay, Inc., is a

corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office located at 234 NW 5th Avenue, Portland, Oregon. Its principal place of business is located at Second and West Anderson Street, Coos Bay, Oregon.

Respondent Pay Less Drug Store of Pendleton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office located at 234 NW 5th Avenue, Portland, Oregon. Its principal place of business is located at 301 South Main Street, Pendleton, Oregon.

Respondent Pay Less For Drugs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office located at 234 NW 5th Avenue, Portland, Oregon. Its principal place of business is located at 1209 Adams Street, La Grande, Oregon.

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 Pay Less Drug Stores Northwest, Inc., House of Values, Incorporated, House of Values of Bremerton, Inc., Pay Less Drug Store of Mt. Vernon, Inc., Eureka Pay Less For Drugs Company, Pay Less Drug Store of Coos Bay, Inc., Pay Less Drug Store of Pendleton, Inc., and Pay Less For Drugs, Inc., corporations, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of safety helmets do forthwith cease and desist from representing, orally, in writing, or in any other manner, directly or by implication, that the Lear-Siegler "El Dorado 77 (S-80 Spoiler)," the PIP (Pacific Interchange Parts) "GP-2," the American Safety Equipment Corporation "Titan" or any other safety helmet is the world's safest or is safer than any other safety helmet, or words of similar import or meaning, or that any such product is effective in protecting the head from injury, unless respondents have a reasonable basis for such representation at the time it is made, including documentation of scientific tests or other scientific data.

*It is further ordered,* That respondents shall cause dissemination of clear and conspicuous public notice not less



than two columns in width and of the same length and content as Exhibits A through H annexed hereto in the publications noted therein. Said public notices shall be published in an equal number of issues as the original advertisements on dates approved by the Seattle Regional Office.

*It is further ordered,* That respondents immediately refund the respective purchase price in cash to any person who, within thirty (30) days of the date of publication of said public notices tenders a safety helmet of the type described in Exhibits A through H annexed hereto and asserts that said helmet was purchased as a result of the original false and misleading advertisement.

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


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

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

**PUBLIC NOTICE**

**EL DORADO 77**  
**SAFETY HELMET**

Protect your head with the World's Safest Helmet! Custom adjustable to your head size. One piece polycarbonate shell for lighter weight with increased strength. Z90.1 approved.




**\$12.88**

ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE INITIALLY APPEARED IN THE SEATTLE TIMES.

WE HAVE NOW BEEN INFORMED THAT THE HELMET ADVERTISED IS NOT "THE WORLD'S SAFEST HELMET." THE HELMET IN QUESTION IS MADE WITH A POLYCARBONATE SHELL. ALTHOUGH SUCH A HELMET MAY MEET THE Z90.1-1966 STANDARDS, NO POLYCARBONATE SHELL HELMET HAS YET MET THE MOST RIGOROUS STANDARD SET OUT UNDER THE TEST PROCEDURES OF THE SNELL MEMORIAL FOUNDATION TO QUALIFY FOR SNELL APPROVAL.

BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, HOUSE OF VALUES WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT, FROM ANY HOUSE OF VALUES STORE.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.



**HOUSE OF VALUES**

AD TO RUN IN THE SEATTLE TIMES

Exhibit A

## PUBLIC NOTICE



**SAFETY HELMET**

Protect your head with the World's Safest Helmet! Custom adjustable to your head size. One piece polycarbonate shell for lighter weight with increased strength. Z90.1 approved.

~~1288~~

ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE APPEARED IN THIS NEWSPAPER.

WE HAVE NOW BEEN INFORMED THAT THE HELMET ADVERTISED IS NOT "THE WORLD'S SAFEST HELMET." THE HELMET IN QUESTION IS MADE WITH A POLYCARBONATE SHELL. ALTHOUGH SUCH A HELMET MAY MEET THE Z90.1-1966 STANDARDS, NO POLYCARBONATE SHELL HELMET HAS YET MET THE MOST RIGOROUS STANDARD SET OUT UNDER THE TEST PROCEDURES OF THE SNELL MEMORIAL FOUNDATION TO QUALIFY FOR SNELL APPROVAL.

BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, HOUSE OF VALUES WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT, FROM ANY HOUSE OF VALUES STORE.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.




Exhibit B

Exhibit B

AD TO RUN IN THE  
FEDERAL WAY NEWS

**PUBLIC NOTICE**

**FOR AUTO NEEDS**



**ALSPORT™**  
**SAFETY**  
**HELMETS**

Protect your head with the World's Safest Helmet! Custom adjustable to your head size. One piece polycarbonate shell for lighter weight with increased strength. Z90.1 approved

\$1288

EA.

ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE APPEARED IN THIS NEWS-PAPER.

WE HAVE NOW BEEN INFORMED THAT THE HELMET ADVERTISED IS NOT "THE WORLD'S SAFEST HELMET." THE HELMET IN QUESTION IS MADE WITH A POLYCARBONATE SHELL. ALTHOUGH SUCH A HELMET MAY MEET THE Z90.1-1966 STANDARDS, NO POLYCARBONATE SHELL HELMET HAS YET MET THE MOST RIGOROUS STANDARD SET OUT UNDER THE TEST PROCEDURES OF THE SNELL MEMORIAL FOUNDATION TO QUALIFY FOR SNELL APPROVAL.

BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, HOUSE OF VALUES WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT, FROM ANY HOUSE OF VALUES STORE.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.





Exhibit C

AD TO RUN IN THE LYNNWOOD ENTERPRISE

Exhibit C

**PUBLIC NOTICE**



**SAFETY  
HELMET**

Protect your head with the World's Safest  
Helmet! Custom adjustable to your head  
size. One piece polycarbonate shell for  
lighter weight with increased strength. Z90.1  
approved.

**\$1288**

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BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, HOUSE OF VALUES WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.


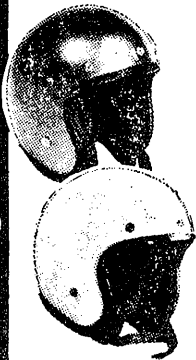


Exhibit D

AD TO RUN IN THE  
SKAGIT VALLEY HERALD

**PUBLIC NOTICE**

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<p><b>ALLSPORT</b></p> 	<p style="text-align: center;"><b>TITAN SAFETY HELMET</b></p> <p>Protect your head with the world's safest helmet! Custom adjustable to your head size. One piece polycarbonate shell for lighter weight with increased strength. Z90.1 approved.</p> <p style="font-size: 2em; text-align: center;"><b>\$12<sup>88</sup></b></p>
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ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE APPEARED IN THIS NEWSPAPER.

WE HAVE NOW BEEN INFORMED THAT THE HELMET ADVERTISED IS NOT "THE WORLD'S SAFEST HELMET." THE HELMET IN QUESTION IS MADE WITH A POLYCARBONATE SHELL. ALTHOUGH SUCH A HELMET MAY MEET THE Z90.1-1966 STANDARDS, NO POLYCARBONATE SHELL HELMET HAS YET MET THE MOST RIGOROUS STANDARD SET OUT UNDER THE TEST PROCEDURES OF THE SNELL MEMORIAL FOUNDATION TO QUALIFY FOR SNELL APPROVAL.

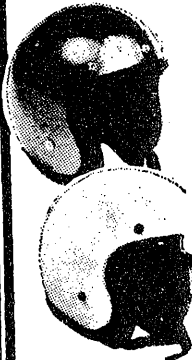
BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, PAY LESS DRUG STORE WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.



AD TO RUN IN THE EUREKA TIMES-STANDARD

## PUBLIC NOTICE



**ALSPORT™**

**TITAN**

### **SAFETY HELMET**

Protect your head with the world's safest helmet! Custom adjustable to your head size. One piece polycarbonate shell for lighter weight with increased strength. Z90.1 approved.


**\$12<sup>88</sup>**

ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE APPEARED IN THIS NEWSPAPER.

WE HAVE NOW BEEN INFORMED THAT THE HELMET ADVERTISED IS NOT "THE WORLD'S SAFEST HELMET." THE HELMET IN QUESTION IS MADE WITH A POLYCARBONATE SHELL. ALTHOUGH SUCH A HELMET MAY MEET THE Z90.1-1966 STANDARDS, NO POLYCARBONATE SHELL HELMET HAS YET MET THE MOST RIGOROUS STANDARD SET OUT UNDER THE TEST PROCEDURES OF THE SNELL MEMORIAL FOUNDATION TO QUALIFY FOR SNELL APPROVAL.

BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, PAY LESS DRUG STORE WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.



AD TO RUN IN THE  
COOS BAY WORLD

**PUBLIC NOTICE**

**ALSPORT™ PIP SAFETY HELMET**

Protect your head with the world's safest helmet! Custom adjustable to your head size. One piece polycarbonate shell for lighter weight with increased strength. Z90.1 approved.

**\$1397**

ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE APPEARED IN THIS NEWSPAPER.

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BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD PAY LESS DRUG STORE WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.

**Pay Less Drug Store**


AD TO RUN IN THE  
PENDLETON EAST OREGONIAN

Exhibit G



**PUBLIC NOTICE**

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**ALSPORT™**      **Motorcycle**  
**SAFETY**  
**HELMET**

Protect your head with the worlds  
safest helmet. Custom adjustable  
to your head size. One piece poly-  
carbonate shell for lighter weight  
with increased strength.

\$997

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ON AUGUST 23, 1972, THE ADVERTISEMENT SHOWN ABOVE APPEARED IN THIS NEWS-PAPER.

WE HAVE NOW BEEN INFORMED THAT THE HELMET ADVERTISED IS NOT THE WORLD'S SAFEST HELMET. THE HELMET IN QUESTION IS MADE WITH A POLYCARBONATE SHELL ALTHOUGH SUCH A HELMET MAY MEET THE Z90 1-1966 STANDARDS. NO POLYCARBONATE SHELL HELMET HAS YET MET THE MOST RIGOROUS STANDARD SET OUT UNDER THE TEST PROCEDURES OF THE SNELL MEMORIAL FOUNDATION TO QUALIFY FOR SNELL APPROVAL.

BECAUSE OF THE ERROR UNDER WHICH THIS HELMET WAS ADVERTISED AND SOLD, PAY LESS DRUG STORE WILL, FOR 30 DAYS FOLLOWING THE APPEARANCE OF THIS NOTICE, ACCEPT THE RETURN FOR FULL CASH REFUND OF ANY HELMET PURCHASED AS A RESULT OF THE ABOVE ADVERTISEMENT.

THIS NOTICE AND OFFER OF REFUND IS MADE PURSUANT TO AN AGREEMENT REACHED WITH THE SEATTLE REGIONAL OFFICE, FEDERAL TRADE COMMISSION.




Exhibit H

AD TO RUN IN THE  
LA GRANDE OBSERVER

## Complaint

IN THE MATTER OF  
MIRO INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION  
OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE  
FIBER PRODUCTS IDENTIFICATION ACTS

*Docket C-2407. Complaint, May 29, 1973—Decision, May 29, 1973.*

Consent order requiring several Jersey City, New Jersey, manufacturers and sellers of women's and misses' wearing apparel, among other things to cease misbranding its textile fiber products.

## 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 Miro Inc., Herald Modes Inc., Empire Fashions Inc., Rain-Ette Fashions Inc., and Suz-Ette Fashions Inc., corporations, and Robert Mincow, individually and as an officer of said corporations, hereinafter 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 now 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. Respondents Miro Inc., Suz-Ette Fashions Inc., and Herald Modes Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Empire Fashions Inc., and Rain-Ette Fashions Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Their office and principal place of business is located at Burma Road and Wolf Drive, Liberty Industrial Park, Jersey City, New Jersey.

Respondent, Robert Mincow, is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of the said corporate respondents including those hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture and sale of women's and misses' wearing apparel, including, but not limited to coats.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, offering for sale in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States of textile fiber products; and have sold, offered for sale, delivered, transported and caused to be transported, textile fiber products, which have been offered for sale in commerce; and have sold, offered for sale, 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 products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by the respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products (women's coats) with labels which set forth the fiber content as "75% Acrylic, 20% cotton, 5% linen," whereas, in truth and in fact, the said textile fiber products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. 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 methods of competition and unfair and deceptive acts and practices, 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 New York 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 Textile Fiber Products Identification Act, as amended; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 procedures 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. Respondents Miro Inc., Suz-Ette Fashions Inc., and Herald Modes Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at Burma Road and Wolf Drive, Liberty Industrial Park, Jersey City, New Jersey.

Respondents Empire Fashions Inc., and Rain-Ette Fashions Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with their office and principal place of business located at Burma Road and Wolf Drive, Liberty Industrial Park, Jersey City, New Jersey.

Respondent Robert Mincow is the president of said corporate respondents. He formulates, directs and controls the acts, practices and policies of said corporate respondents. Robert Mincow's office and principal place of business is located at Burma Road and Wolf Drive, Liberty Industrial Park, Jersey City, New Jersey.

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 Miro Inc., Herald Modes Inc., Empire Fashions Inc., Rain-Ette Fashions Inc., and Suz-Ette Fashions Inc., corporations, their successors and assigns, and their officers, and Robert Mincow, individually and as an officer of said corporations, and respondents' agents, representatives, and employees directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States 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 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, as forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. 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.

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

*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.

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IN THE MATTER OF

THOMAS J. LIPTON, INC., ET AL.

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

*Docket C-2408. Complaint, May 29, 1973—Decision, May 29, 1973.*

Consent order requiring a Johnstown, New York, manufacturer, seller and distributor of a multi-flavored dry preparation, Knox Gelatine Drink, among other things to cease advertising that its product makes a substantial contribution to general health or to nutritional needs.

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 Thomas J. Lipton, Inc., a corporation, and Knox Gelatine, Inc., a 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Thomas J. Lipton, 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 800 Sylvan Avenue, Englewood Cliffs, New Jersey.

PAR. 2. Respondent Knox Gelatine, 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 One Knox Avenue, Johnstown, New York.

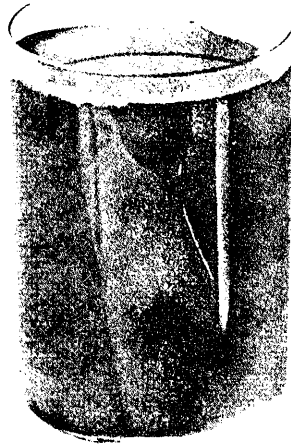
PAR. 3. Respondents Thomas J. Lipton, Inc., and Knox

Gelatine, Inc., are, and for some time last past have been, engaged in the manufacture, sale and distribution of Knox Gelatine Drink, a multi-flavored dry preparation, and other food products.

PAR. 4. Respondents Thomas J. Lipton, Inc., and Knox Gelatine, Inc., cause the said products, when sold, to be transported from Knox's place of business in one State of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondents Thomas J. Lipton, Inc., and Knox Gelatine, Inc., maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 5. In the course and conduct of their said businesses, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act, respondents have made and are now making certain statements and representations in print advertisements and product packaging and labeling. Such statements and representations are made in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. The following magazine advertisements containing numerous statements and representations with respect to said products are typical and illustrative of said advertisements and product packaging and labeling;



## Surprise! Family nutrition is a glass of grapefruit.

Family nutrition is a drink of cool, delicious freshness. It's the pure, crisp taste of pink grapefruit with all the nutrition of gelatine protein and all the Vitamin C people need in a day. It's a total-dissolving, never-gelling, nail-strengthening Knox Gelatine Drink in pink grapefruit, orange, grape, and cranberry-orange.







**Surprise!**  
**4 tasty ways to drink**  
**to your health!**

All the nutrition of gelatine protein, healthier nails, all the Vitamin C people need in a day. In 4 fresh, natural flavors: grapefruit, orange, grape and cranberry-orange. Bottoms up.





# Surprise! Natural flavor boost juices

Here's to the health of you and yours. Here's the fresh, natural flavor of orange, cranberry-orange, grape or grapefruit in a delicious gelatine protein drink. Knox Gelatine Protein Drinks. Every one not only a proven nail strengthener, but enriched with Vitamin C, chock full of nutrition for the whole family. Good, healthy gelatine protein drinks that dissolve instantly, never gel. Yours only from Knox, naturally.



**KNOX**  
**SURPRISE!**  
**GELATINE**  
**DRINKS**

PAR. 7. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented directly and by implication that:

A. Gelatine protein is in and of itself a high-quality protein that provides a significant nutritional benefit to individuals.

B. The consumption of Knox Gelatine Drink, a gelatine protein drink, makes a substantial contribution to the health and nutritional needs of individuals.

PAR. 8. In truth and in fact:

A. Gelatine protein is a low-quality protein of little nutritional benefit to individuals.

B. The consumption of Knox Gelatine Drink, a gelatine protein drink, does not make a substantial contribution to satisfying the nutritional needs of individuals.

Therefore, the representations referred to in Paragraph Six were and are deceptive in material respects and constituted, and now constitute, unfair or deceptive acts and practices as defined in Section 5 of the Federal Trade Commission Act, and the statements and representations set forth in Paragraph Six and Seven were, and are, false, misleading and deceptive.

PAR. 9. The use by respondents of the aforesaid deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents Lipton's and Knox's Knox Gelatine Drink by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices 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 respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement, placed such agreement on the public record for a period of thirty (30) days, and received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Thomas J. Lipton, 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 800 Sylvan Avenue, Englewood Cliffs, New Jersey.

Respondent Knox Gelatine, 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 One Knox Avenue, Johnstown, New York.

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 respondent Thomas J. Lipton, Inc., a corporation, and respondent Knox Gelatine, Inc., a corporation, their successors and assigns and their officers, agents, representatives and employees directly or through any corporate or other device, in connection with the advertising,

offering for sale, sale or distribution of Knox Gelatine Drink or any other food product hereinafter described forthwith cease and desist from:

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

A. Represents, directly or by implication, that gelatine protein is a high quality protein or provides nutritional benefit to individuals.

B. Represents, directly or by implication, that the consumption of Knox Gelatine Drink makes a substantial contribution to the general health of individuals or to the nutritional needs of individuals.

C. Represents, directly or by implication, that the consumption of any gelatine food product, which relies primarily on gelatine to produce a jelled condition in the food as prepared, makes a contribution to good health of individuals or is nutritious.

D. Misrepresents, directly or by implication, in any manner the benefit to the health of the consumer resulting from consumption of any gelatine drink or gelatine food product which relies primarily on gelatine to produce a jelled condition in the food as prepared.

*Provided*, That nothing herein shall preclude respondents from representing that gelatine protein is a high quality protein, if respondents can demonstrate by competent and reliable scientific evidence that such gelatine protein has been supplemented with essential amino acids or those amino acids necessary to convert gelatine protein into a high quality protein, as the highest biological quality protein is described by the Food and Drug Administration Proposed Food Nutrition Labeling Regulations, or any such regulations promulgated or superseding regulations.

*Provided further*, That nothing herein shall preclude respondents from making representations, if supported by competent and reliable scientific evidence, regarding the effect of gelatine protein as an aid to dieting.

2. 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 or misrepresentations prohibited in Paragraph 1 hereof.

## II

*It is further ordered*, That respondents Thomas J. Lipton, Inc., a corporation, and Knox Gelatine, Inc., a corporation, their successors and assigns and their officers, agents, representatives and employees, directly or through any other device, in connection with the advertising, labeling, offering for sale, sale or distribution of Knox Gelatine Drink or any other food product described in Part I hereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, directly or by implication, any of the representations or misrepresentations prohibited in Part I hereof.

The provisions to Part I hereof are applicable to this Part II of the 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 notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

*It is further ordered*, That each respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by each respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

## IN THE MATTER OF

## FRANCIS FORD, INC., ET AL.

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

*Docket C-2409. Complaint, May 29, 1973—Decision, May 29, 1973.*

Consent order requiring a Portland, Oregon automobile dealership, among other things to cease representing that its lifetime warranty is free;

misrepresenting their guarantees; misrepresenting used motor vehicles as new; misrepresenting the particular accessories, equipment or features available on sale priced new motor vehicles; failing to refund deposits; and preparing final contracts in different terms than agreed to by the customer.

#### 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 Francis Ford, Inc., a corporation, and William T. Murphree and C. Edwin Francis, 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Francis Ford, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its principal office and place of business located at 509 S.E. Hawthorne Boulevard, Portland, Oregon.

Respondents William T. Murphree and C. Edwin Francis are individuals and are officers, directors and shareholders of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices herein described. Their 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 advertising, offering for sale, sale and distribution of automobiles, pickup trucks and other motor vehicles to the public.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused, their automobiles to be sold to individuals and corporate citizens of states other than the State of Oregon. In the course and conduct of their business, respondents maintain, and at all times mentioned herein, have maintained a substantial course of trade in said automobiles, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing prospective customers to come to their place of business and to purchase their automobiles, respondents are now causing and for some time last past have caused numerous

statements and representations to be disseminated in newspapers of interstate circulation and in television and radio broadcasts of interstate transmission, with respect to the number, description, condition and cost of their automobiles and their lifetime warranty program.

By and through the use of such statements and representations, respondents have represented and are now representing, directly or by implication:

1. That customers who ask about respondents' lifetime warranty will receive it at no extra cost;
2. That respondents' lifetime warranty is unconditional and has no conditions or limitations;
3. That a motor vehicle available for sale at a specified price is new and not used;
4. That a new motor vehicle for sale at a specified price possesses particular accessories, equipment, or features;
5. That several motor vehicles of a particular type or description are available for sale at a specified price.

PAR. 5. In truth and in fact:

1. Not all customers who ask about respondents' lifetime warranty receive it at no extra cost;
2. Respondents' lifetime warranty is not unconditional and has conditions or limitations;
3. In some instances motor vehicles represented to be new and available for sale at a specified price were used;
4. In some instances said motor vehicles did not possess the particular accessories, equipment, or features, as represented;
5. In some instances only one of said motor vehicles was available for sale at the specified price.

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

PAR. 6. In the course and conduct of their business, respondents and their salesmen required customers to tender a deposit consisting of a small amount of money such as twelve dollars. Respondents and their salesmen have orally represented that said deposit will be returned to the customer in the event he decides not to purchase an automobile from respondents. In some instances where the customer has decided not to purchase an automobile from respondents, respondents and their salesmen have failed to immediately return said deposit to the customer.

Therefore, the acts and practices set forth herein were and are unfair and false, misleading and deceptive.



PAR. 7. In the further course and conduct of their business and for the purpose of furthering their sales program and inducing customers to purchase their automobiles, respondents and their salesmen have prepared the final retail installment contract of a customer in terms different from those previously agreed to by the customer without disclosing to the customer that the change in terms will result in a higher price or lower trade-in allowance, and misrepresented the amount of the sale price, trade-in allowance or finance charge.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have done.

PAR. 10. 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.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Francis Ford, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its principal place of business located at 509 S.E. Hawthorne Boulevard, Portland, Oregon.

Respondents William T. Murphree and C. Edwin Francis are individuals and are officers of Francis Ford, Inc. They formulate, direct and control the policies, acts and practices of said corporation. Their address is the same as that of the corporate respondent.

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

#### ORDER

*It is ordered,* That respondents Francis Ford, Inc., a corporation, its successors and assigns, and its officers, and William T. Murphree and C. Edwin Francis, individually and as officers, 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 automobiles, pickup trucks or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and

desist, orally or in any other manner, directly or by implication, from:

1. Representing that respondents' lifetime warranty or any other new car warranty offered in addition to the manufacturer's warranty is free;

2. Representing that any of respondents' motor vehicles are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; *Provided*, That this inhibition shall not apply to advertisements which merely advise the availability of a manufacturer's new car warranty;

3. Failing to clearly and conspicuously disclose that a used motor vehicle available for sale at a specified price is not new; representing that a used motor vehicle is new;

4. Representing that a new motor vehicle available for sale at a specified price possesses particular accessories, equipment, or features for the specified price when such motor vehicle is not so equipped for the specified price;

5. Failing to clearly and conspicuously disclose that a new motor vehicle of a particular type or description advertised for sale at a specified price is a one-of-a-kind item; failing to disclose respondents' inventory stock number for such motor vehicle;

*It is further ordered*, That respondents forthwith cease and desist from:

1. Failing to return the prospective customer's deposit immediately upon his request, if requested prior to consummation of the sale;

2. Failing to provide a prospective customer with a receipt or written notice at the time he makes a deposit. The following statement shall be included on the face of said receipt or written notice in clear and conspicuous terms:

NOTICE

This deposit does not consummate a sale or obligate you to purchase an automobile from Francis Ford. In the event you decide not to purchase from Francis Ford, you are entitled to an immediate refund of your deposit.

*It is further ordered*, That respondents forthwith cease and desist from preparing the final retail installment contract in terms different from those previously agreed to by the customer; or misrepresenting, in any manner, either before or after the

consummation of the sale, the amount of the sale price or trade-in allowance or the amount of finance charge to be imposed in a related credit transaction.

*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 offering for sale or sale of any product, or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging the 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 this order.

*It is further ordered,* That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment, *Provided,* That with respect to C. Edwin Francis, notification shall only be required if he becomes affiliated with a new automobile dealership or other seller of automobiles. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

*It is further ordered,* That 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.

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IN THE MATTER OF

RUSS VENTO CHEVROLET, INC., ET AL.

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

*Docket C-2410. Complaint, May 31, 1973—Decision, May 31, 1973.*

Consent order requiring a Denver, Colorado, new and used car and motor home vehicle dealer, 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.

## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulations promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Russ Vento Chevrolet, Inc., a corporation, and Russ Vento, individually and as an officer of said corporation, and Robert J. Hall, individually and as general sales manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulations, 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 Russ Vento Chevrolet, 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 1156 Broadway, Denver, Colorado.

Respondent Russ Vento is president of the corporate respondent. He formulates, directs, and controls the policies, 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.

Respondent Robert J. Hall is general sales manager of the corporate respondent. He prepares and is responsible for the advertising used by the corporate respondent. 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 advertising, offering for sale, and sale of new and used automobiles, motor homes, campers, and travel trailers to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and are now causing, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to be placed in various media for the purpose of aiding, promoting, or assisting, directly or indirectly, the credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, of respondents' said automobiles, motor homes, campers, and travel trailers.

PAR. 4. Subsequent to July 1, 1969, certain of the advertisements referred to in Paragraph Three above have

stated the amount of the downpayment required or that no downpayment is required, or the amount of installment payments, without also stating, as required by Section 226.10(d)(2) of Regulation Z, in terminology prescribed under Section 226.8 of Regulation Z, and in the manner and form prescribed under Section 226.6(a) of Regulation Z, all of the following:

1. the cash price;
2. the amount of the downpayment required or that no downpayment is required, as applicable;
3. the number, amount, and due dates or period of payments scheduled to repay the indebtedness;
4. the amount of the finance charge expressed as an annual percentage rate; and
5. the deferred payment price.

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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, 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, and 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 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 and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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 Russ Vento Chevrolet, 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 1156 Broadway, Denver, Colorado.

Respondent Russ Vento 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.

Respondent Robert J. Hall is general sales manager of said corporation. He prepares and is responsible for the advertising used by the corporate respondent. His address is the same as that of the corporate respondent.

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 respondent Russ Vento Chevrolet, Inc., a corporation, and its officers, and Russ Vento, individually and as an officer of said corporation, and Robert J. Hall, individually and as general sales manager of said corporation, trading under said corporate name or under any trade name or names, their successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the arrangement, extension, or advertisement of consumer credit in connection with the sale of automobiles, motor homes, campers, travel trailers, or other products or services, as "advertisement" and "consumer credit" 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. Representing, directly or by implication, in any advertisement, as "advertisement" is defined in Regulation Z, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items

are stated in terminology prescribed under Section 226.8 of Regulation Z:

- a. the cash price;
- b. the amount of the downpayment required or that no downpayment is required, as applicable;
- c. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- d. the amount of the finance charge expressed as an annual percentage rate, and
- e. the deferred payment price.

2. Failing to print the term "annual percentage rate" more conspicuously than other terminology required by Regulation Z, when that term is required to be used by Regulation Z.

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

4. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in any aspect of preparation, creation, and placing of advertising, all persons engaged in reviewing the legal sufficiency of advertising, and all present and future agencies engaged in preparation, creation, and placing of advertising on behalf of respondents, and failing to secure from each such person or agency a signed statement acknowledging receipt of said 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 the order.

*If is further ordered,* That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged



as well as a description of their duties and responsibilities.

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

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IN THE MATTER OF  
WINN-DIXIE STORES, INC.

*Docket C-1110. Order and Opinion, May 30, 1973.*

Order and opinion denying respondent's petition for reopening the proceeding and modification of the order to cease and desist. Dissenting statement by Commissioner Dennison.

DISSENTING STATEMENT

BY DENNISON, *Commissioner*:

I am constrained to dissent. On September 14, 1966, the Commission entered into this consent agreement and order which contained a most favored nation clause. Specifically, the provision provided that should the Commission issue an order "in any proceeding involving mergers or acquisitions by a grocery store chain" against respondent's competitors which is less restrictive, the Commission shall reopen and modify respondent's order in conformity therewith.

The respondent has persuasively argued that the order against the Kroger Company (Docket No. C-2067) is less restrictive than the order against it. This point notwithstanding, the majority would have us look behind the plain reading of the order to determine whether the *Winn-Dixie* and *Kroger* factual situations were substantially similar before invoking the most favored nation provision. Why it is necessary to create a "principle of conformity" and to look at the competitive circumstances giving rise to the respective orders, is unclear. The words employed in the provision are neither unclear nor ambiguous. The clause itself, taken as a whole, is clear in its meaning and its import is patent. Most favored nation provisions have always been strictly construed. *Kolopret v. Oregon*, 266 U.S. 187 (1961); *Lukrich v. Department of Labor and Industry*, 176 Wash. 221, 29 P.2d 288 (1934). However, such provisions have

always been construed from the four corners of the agreement. See, *Sanpovincenzo v. Eggan*, 284 U.S. 30 (1931); *Mentula v. State Land Board*, 244 Or. 299, 419 P.2d 581.

In the opinion denying modification, great significance is given to the fact that the respective orders were designed in response to entirely different circumstances. *Winn-Dixie* involved a geographic market extension-type merger, while *Kroger* was a straight horizontal acquisition. While this is certainly true, I question the relevancy of this fact and how it would change the outcome dictated by the original consent order.<sup>1</sup> A most favored nation provision requires the Commission to modify the Winn-Dixie order where there is a less restrictive order issued in any proceeding involving mergers or acquisitions by a grocery store chain. The provision is not limited to geographic market extension-type mergers nor did the Commission in any way reserve discretion in the matter.

Consent orders, agreed to by both the respondent and the Commission, are binding decrees. If the respondent is to be bound, usually at its detriment, then the Commission must likewise be bound; sometimes to its detriment. If the Commission wanted to limit the most favored nation treatment to only geographic market extension cases, it should have insisted upon this narrower language in the consent negotiations. It did not and must now live with the broader language. Therefore, I dissent.

#### OPINION OF THE COMMISSION

On May 3, 1972, Winn-Dixie Stores, Inc. ("Winn-Dixie"), filed a petition in accordance with Section 3.72(b)(2) of the Commission's Rules of Practice<sup>1</sup> requesting modification of a consent order and agreement of September 14, 1966, as subsequently modified by the Commission on June 24, 1968. By minute of October 31, 1972, the matter was set down for oral argument which was heard on March 28, 1973. Having considered all the arguments presented orally and in supporting memoranda the Commission has determined that the petition be denied.

The basis of Winn-Dixie's request is a provision in the consent agreement which, in pertinent part, provides:

<sup>1</sup> Apparently this distinction failed to impress the Commission at the time of the first modification of the *Winn-Dixie* order to conform to the *Grand Union* order. Docket C-1350, 73 F.T.C. 1050 (1968) The *Grand Union* case involved a *horizontal acquisition*.

<sup>1</sup> Rule 3.72 is a successor to Rule 3.28.

[I]n the event that the Federal Trade Commission issues any Order or Rule which is less restrictive than the provisions of this Order, in any proceeding involving mergers or acquisitions by a grocery store chain, then the Commission shall, upon the application of respondent, pursuant to Rule 3.28 of the Commission's Rules of Practice, reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the restrictions imposed upon respondent herein into conformity with those imposed upon its competitors.

It is Winn-Dixie's contention that a final Commission consent order issued on October 26, 1971 against the Kroger Co. ("Kroger") and Federated Department Stores, Inc., is "less restrictive" than its own and that modifications are "necessary to bring the restrictions imposed upon respondent herein into those imposed upon its competitors." The determination of whether the principle of "conformity" requires any modification of the *Winn-Dixie* order rests, of necessity, upon a comparison of the factual circumstances.

#### WINN-DIXIE COMPLAINT AND ORDER

The activities giving rise to the original complaint in this matter were Winn-Dixie's acquisition of the 35-store Hill Grocery chain in 1962 which was operating in northern and central Alabama and Winn-Dixie's subsequent acquisition in 1963 of 9 grocery stores operated by Colonial Stores, Inc., in Birmingham, Alabama.<sup>2</sup> These acquisitions were charged as essentially geographic market extensions although they did have horizontal aspects.<sup>3</sup> The complaint alleged that in one of the geographic areas affected by the acquisitions, Birmingham, Alabama, Winn-Dixie was able to enter a new market and shortly thereafter have a marketshare of 20 percent. The consent order which ultimately issued did not require divestiture of any of these stores. Rather, the consent order provided that for a ten-year period, Winn-Dixie was prohibited from making any acquisition of any retail food or grocery store without prior Commission approval.

By order of June 24, 1968, the Commission granted Winn-Dixie's petition to modify the above order to bring it into conformity with an order entered in the matter of *Grand Union*.<sup>4</sup>

<sup>2</sup> The factual background of the Winn-Dixie complaint and order and recited in the complaint which was officially published together with the consent order. *In the Matter of Winn-Dixie Stores, Inc.*, 70 F.T.C. 611 (1966). No issue has been raised as to the validity of the facts of Winn-Dixie's acquisitions.

<sup>3</sup> Prior to Winn-Dixie's acquisition of the Hill Grocery chain, there were no Winn-Dixie stores in Birmingham, Alabama. Hill operated 23 of its 35 stores in Birmingham and was the leading grocery store company in that city. With the subsequent acquisition of the 9 Colonial Stores, Winn-Dixie controlled approximately 20 percent of the grocery store sales market in Birmingham. [See, Transcript Oral Argument (T.O.) p. 4]

<sup>4</sup> Docket No. C-1350, June 21, 1968, (73 F.T.C. 1050)

As a result of this modification, Winn-Dixie was required to seek approval from the Commission only for mergers or acquisitions involving five or more retail food or grocery stores, annual grocery store sales of more than five million dollars or combined (respondent and the grocery stores to be acquired or merged) grocery store sales of more than 5 percent of total grocery or food store sales in any city or county in the United States.<sup>5</sup> For any proposed merger or acquisition of a retail food or grocery store falling below these criteria, Winn-Dixie need only give the Commission 60 days prior notification.

#### KROGER COMPLAINT AND ORDER<sup>6</sup>

The Kroger complaint challenged Kroger's acquisition by lease of the food departments of 3 Gold Circle Stores in Dayton, Ohio, which were operated by Federated Department Stores, Inc. The acquisition was challenged as a horizontal acquisition which was alleged to have increased Kroger's share of the market by 2.5 percent. Prior to this acquisition, Kroger was alleged to have accounted for approximately 20 percent of the total food store sales in the Dayton marketing area. Under the order which issued, Kroger was required to divest itself of the leased stores. Kroger was also required to seek Commission approval of any merger or acquisition of any food store or any department in any non-food store which meet the "5, 5 and 5 criteria" and which took place in certain named geographic areas or in any other area in which Kroger was then operating a food store or food department in a non-food store. As to any mergers or acquisitions which do not fall within these criteria Kroger was required to provide the Commission with notification of their plans. In most instances Kroger must notify the Commission prior to the merger or acquisition. However, in narrowly circumscribed instances of small-scale mergers or acquisitions, notification may be subsequent to the merger or acquisition.<sup>7</sup>

<sup>5</sup> These are often referred to as the "5, 5 and 5 criteria."

<sup>6</sup> *In the Matter of the Kroger Company and Federated Department Stores, Inc.*, Dkt. No. C-2067 79 F.T.C. 636 (October 26, 1971). [See footnote one, *supra*.]

<sup>7</sup> In pertinent part the notification provision of the Kroger order is as follows:

For a period of ten (10) years from the effective date of this Order, Kroger shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any food store or food department in a non-food store for which prior approval is not required pursuant to subparagraphs (A) - (C) [in which prior approval is required] without providing sixty (60) days' prior notification to the Commission, or, when the time schedule does not permit such notification, without providing a letter to the Commission within ten (10) days after the agreement or understanding in principle is reached, stating that the time schedule does not permit sixty (60) days' prior notification and setting forth the reasons why such prior notification cannot be made; provided, however, that for mergers or acquisitions involving not more than four (4) food stores or food departments in non-food stores and representing annual food store or food department sales of not more than five million dollars (\$5,000,000), notification to the Commission shall be provided within thirty (30) days following the consummation of such merger or acquisition.

## WINN-DIXIE'S PETITION FOR MODIFICATION

It is Winn-Dixie's contention that the *Kroger* order is "less restrictive" in three respects and that its order, by the terms of the consent agreement, must be modified to reflect the *Kroger* order. First, Winn-Dixie notes that Kroger's duty of seeking prior approval as to mergers or acquisitions is limited as to territories in which it operates a food store or department. Winn-Dixie argues that its order should be modified so as to limit it to territories in which it is presently doing business. Second, Winn-Dixie argues that its order must be modified to reflect the flexibility of the *Kroger* order as to the requirement of 60-days notification of mergers or acquisitions which fall below the "5, 5 and 5 criteria." Finally, Winn-Dixie requests that its order, like Kroger's, provide for post-acquisition notification of certain small-scale acquisitions instead of having to notify the Commission prior to any such acquisition.

The essence of Winn-Dixie's argument in support of its petition is that the plain language of its consent agreement requires the above modifications and that no other reasonable position can be taken if the Commission stays within the "four corners" of the consent agreement.<sup>8</sup> Winn-Dixie also argues the Commission must recognize that "[t]he use of the term 'restrictive' [in the consent agreement] is carefully designed to operate *prospectively*" and that the provision of the *Kroger* order requiring divestiture should not bear upon the Commission's consideration of whether the Kroger order is presently "less restrictive." [Winn-Dixie Brief p. 8] [emphasis in original] Additionally, Winn-Dixie contends that if the modifications are not made it will be at a competitive disadvantage vis-a-vis Kroger if both companies seek to acquire a grocery store or department in which neither is doing business since, under these circumstances, Kroger, unlike Winn-Dixie, will never have to seek prior Commission approval of the proposed course of action. In the same vein, Winn-Dixie argues it is at a competitive disadvantage as a result of the flexible notification provisions which apply to Kroger. Finally, Winn-Dixie asserts that the modifications "will not substantially diminish the Commission's ability to attack any grocery store acquisition by Winn-Dixie if the agency believes it to be anticompetitive" since the notification provisions of the order as modified would provide the

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<sup>8</sup> See, *United States v. Armour & Co.*, 402 U.S. 673 (1971).

Commission with ample protection in this regard. [Winn-Dixie Brief p. 18]

In response to Winn-Dixie's petition and arguments, the Commission's Bureau of Competition argues that the *Kroger* order is neither "less restrictive" on its face nor "less restrictive" in its operative effect than the *Winn-Dixie* consent order. According to the Bureau, it is necessary to compare the orders in their entirety, including the provision of the *Kroger* order requiring divestiture. The Bureau argues that both orders apply equally to horizontal mergers. The fact that the *Kroger* order does not apply to market extension mergers cannot, according to the Bureau, be made a basis for comparison since only Winn-Dixie was alleged to have made this type of acquisition. The acquisitions challenged in the *Kroger* complaint involved horizontal mergers not market extension mergers. The challenged acquisitions giving rise to the *Winn-Dixie* complaint were essentially market extension mergers. Turning to the operative effects of the orders, the Bureau points out that both Kroger and Winn-Dixie must plan mergers or acquisitions in accordance with the Commission's *Enforcement Policy With Respect to Mergers in the Food Distribution Industries* (January 3, 1967). The policy is uniform and all parties know it will apply equally to both. Thus, Winn-Dixie's order cannot place it at a competitive disadvantage with respect to Kroger. As to the one difference between the orders of any arguable significance, prior approval of certain market extension mergers or acquisitions where neither firm operates, the Bureau contends that the fact of prior approval certainly does not create any significant disadvantage and that in any event, neither firm is actually competing in those areas and thus, in fact, there can be no *competitive* disadvantage. Accordingly, the Bureau opposes any modifications.

#### THE PRINCIPLE OF CONFORMITY

The focal issue before the Commission is whether the *Winn-Dixie* order requires any modifications in order to ensure that it is not more restrictive than the *Kroger* order. Winn-Dixie recognizes that in order to determine this question, they are not arguing that conformity is synonymous with identity. As stated in their brief,

There are, of course, certain \* \* \* differences between the *Kroger* and *Winn-Dixie* orders [other than the ones requiring modification]. The agreement upon which

this petition is based, however, cannot rationally be read as requiring exact identity of prohibitory language without rendering it a nullity. No two cases are ever exactly alike, particularly in the antitrust field where the interplay of complex economic and legal issues often produces some variances in rationale and remedy. [at p. 8]

Within this framework it is evident that none of the requested modifications are required in order to ensure that the *Winn-Dixie* order is not more restrictive than *Kroger's*. Were the Commission to accept Winn-Dixie's arguments, the carefully designed *Winn-Dixie* order would become a nullity. The crux of the required similarity between the two orders is predicated on the presence in both orders of the "5, 5 and 5 criteria." It is the application of these criteria to the Winn-Dixie acquisitions which serves to assure Winn-Dixie competitive parity with Kroger. Winn-Dixie cannot avoid the inescapable fact that its order was designed in response to circumstances entirely different from those present in the *Kroger* matter. If we were to accept the Winn-Dixie argument and make the requested modifications, Winn-Dixie by virtue of a modified order would be free to engage in the very market extension acquisitions and mergers which gave rise to the Commission's original complaint against it. Certainly the provision in the consent order providing for competitive parity does not require such a result.

Reading the two orders in their entirety and considering only those facts essential to an understanding of these orders,<sup>9</sup> the Winn-Dixie petition must be denied.

#### ORDER DENYING PETITION FOR MODIFICATION OF FINAL ORDER

This matter having come before the Commission upon respondent's petition, filed May 3, 1972, requesting that this proceeding be reopened and that the order issued on September 14, 1966, be modified; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the petition should be denied:

*It is ordered*, That respondent's petition, filed May 3, 1972, be, and it hereby is, denied.

Commissioner Dennison dissenting.

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<sup>9</sup> See footnotes 2 and 6, *supra*.

Complaint

IN THE MATTER OF

SALES MARKETING SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION  
OF SECTION 2 (C) OF THE CLAYTON ACT

*Docket C-2411. Complaint, May 31, 1973—Decision, May 31, 1973.*

Consent order prohibiting a broker of nonfood grocery products and a wholesaler of these items in New Orleans, La., from receiving unlawful brokerage payments.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (15 U.S.C. Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Sales Marketing Services, Inc., hereinafter sometimes referred as "SMS," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its office and principal place of business located at 4500 Melpomene Street, New Orleans, Louisiana.

Respondents Nat Friedler and Richard B. Kaufman, Sr., individuals, are president and secretary respectively of corporate respondent SMS. They own and, at all times mentioned herein have owned, all or substantially all of the stock of SMS, and they formulate, direct, and control the acts, practices and policies of SMS, including the acts and practices hereinafter described.

PAR. 2. Respondent SMS has been and is now engaged in business as a broker, effecting purchases of nonfood grocery products by wholesalers, department stores and headquarter chain groups in Louisiana, Mississippi, Arkansas, and Alabama, from sellers located in the various States of the United States other than the States of Louisiana, Mississippi, Arkansas, and Alabama. In such capacity, respondent has demanded and received commissions, brokerage or other compensation from sellers in connection with effecting purchases of nonfood products. The annual volume of business of SMS, in its capacity as a broker in effecting purchases and sales of nonfood products,



is substantial, amounting to approximately \$650,000 during its first fiscal year which ended November 30, 1971, on which it received brokerage in the amount of approximately \$34,298.

PAR. 3. Respondent SMS, in the course and conduct of its business as a broker, has been and is now effecting purchases of nonfood products by buyers located in Louisiana, Mississippi, Arkansas and Alabama, from sellers located in the various other States of the United States in commerce, as "commerce" is defined in the Clayton Act. Said respondent has transported, or caused such products to be transported from the sellers' places of business to the buyers' places of business located in other states. Thus there has been, at all times mentioned herein, a continuous course of trade in commerce in effecting purchases and sales of such products by said respondent SMS.

PAR. 4. Respondent Kitchenaides, Inc., hereinafter sometimes, referred to as Kitchenaides, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana with its office and principal place of business located at 737 South Cortez Street, New Orleans, Louisiana.

Kitchenaides is jointly owned by Nat Friedler and Richard B. Kaufman, Sr. who are chairman of the board of directors and treasurer, and president respectively of Kitchenaides. Nat Friedler and Richard B. Kaufman, Sr. own all or substantially all of the corporate stock of Kitchenaides. They formulate, direct and control the acts, practices and policies of Kitchenaides, including the acts and practices hereinafter described.

Respondent Kitchenaides is engaged in wholesaling a line of nonfood products for all classes of food stores. The products include notions, housewares, health and beauty aids, hair care items, toys, stationery and school supplies, pet supplies and light bulbs. Distribution to chain and independent supermarkets and convenience food stores by Kitchenaides includes accounts located in Louisiana, Mississippi, Alabama, and northwestern Florida. Respondent Kitchenaides' total sales in 1971 amounted to approximately \$6,500,000.00. Kitchenaides has maintained a continuous course of trade in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 5. On or about August 20, 1970, Nat Friedler and Richard B. Kaufman, Sr. incorporated SMS in Louisiana and commenced business as a broker of nonfood items and in that capacity represented various principals located outside the State of Louisiana in the sales of nonfood items to Kitchenaides. SMS

has sold and continues to sell to Kitchenaides on behalf of various principals located outside the State of Louisiana. In their capacity as broker of nonfood products, respondents Nat Friedler and Richard B. Kaufman, Sr. have collected and continue to collect substantial amounts as commissions or brokerage fees on sales to Kitchenaides. During the period February 1971 through February 1972, SMS collected brokerage of approximately \$5,377.80 on sales of approximately \$93,773.16 to Kitchenaides.

PAR. 6. Nat Friedler and Richard B. Kaufman, Sr. own and at all times mentioned herein have owned all or substantially all of the stock of both corporate respondents, and as officers of both corporate respondents exercise authority and control over the business operations of both companies, including purchase and sales policies. As a result of this joint ownership and control the purchases of nonfood products made by Kitchenaides through SMS is for the benefit of Nat Friedler and Richard B. Kaufman, Sr. and is the same or has the same effect as if they were purchasing for their own account and receiving brokerage on said purchases.

PAR. 7. The acts and practices of respondents and each of them since August 1970, in receiving and accepting commissions, brokerage fees, and allowances on purchases of nonfood products in commerce made directly or indirectly for their own account, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman 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 New Orleans Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and

does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted 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 Sales Marketing Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 4500 Melpomene Street, New Orleans, Louisiana.

Respondents Nat Friedler and Richard B. Kaufman, Sr., are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, including the acts and practices hereinafter described, and their address is the same as that of said corporation.

2. Respondent Kitchenaides, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 737 South Cortez Street, New Orleans, Louisiana.

Respondents Nat Friedler and Richard B. Kaufman, Sr., are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, including the acts and practices hereinafter described, and their address is the same as that of said corporation.

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

*It is ordered*, That respondents Sales Marketing Services, Inc., a corporation, its successors and assigns, and its officers and Nat Friedler and Richard B. Kaufman, Sr., individually and as officers of Sales Marketing Services, Inc., and respondents' agents, representatives and employees, directly or through any

corporation, subsidiary, division, or other device, in or in connection with the purchase or sale of nonfood products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of nonfood products for respondents' own account or where respondents are the agent, representative or intermediary acting for, or in behalf of, or subject to the direct or indirect control of, any buyer.

*It is further ordered*, That Kitchenaides, Inc., a corporation, its successors and assigns, and its officers and Nat Friedler and Richard B. Kaufman, Sr., individually and as officers of Kitchenaides, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in or in connection with the purchase or sale of nonfood products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Receiving or accepting, directly or indirectly, anything of value from Sales Marketing Services, Inc., or any other broker, in connection with the purchase of nonfood products, when such broker, agent, representative or intermediary is receiving or accepting anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof from the seller while acting for or in behalf of or subject to the direct or indirect control of the respondents.

2. Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of nonfood products for respondents' own account.

*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 respondent corporations shall

forthwith distribute a copy of this order to each of their operating divisions.

*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.