

Complaint

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IN THE MATTER OF

KIRBY OF NORTH PROVIDENCE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2590. Complaint, Nov. 1, 1974 — Decision, Nov. 1, 1974*

Consent order requiring a North Providence, R.I., retailer of vacuum cleaners and related products, devices, parts and attachments, among other things to cease using misrepresentations to sell its products and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of credit, such information as required by Regulation Z of said Act.

Appearances

For the Commission: *Lois M. Woocher.*
For the respondents: *William C. Hillman, Strauss, Factor, Chernick & Hillman, Providence, R.I.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kirby of North Providence, Inc., a corporation, and Emanuel Toro, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kirby of North Providence, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 1883 Mineral Spring Avenue, North Providence, R.I.

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

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

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of vacuum cleaners and related products, devices, parts and attachments to the general public.

COUNT I

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

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said products when sold, to be transported from their place of business in the State of Rhode Island and Providence Plantations to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their products, respondents have made and are now making, numerous statements and representations through oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, and performance characteristics of their products.

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

I'll give you a special deal and reduce the price to \$350.00
 I'm in a contest to win a car and because I need to make a sale, I'll give you a special low price on the Kirby
 The price of the Kirby will never be this low again
 This special offer is good only tonight
 If you don't purchase the vacuum tonight, the price will be higher when another Kirby salesman comes
 I'll take \$40.00 off the price if you will fill out 10 referral letters like the one you received.

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

1. Respondents' vacuum cleaners and related products are being offered for sale at special or reduced prices and that purchasers are

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thereby being offered a savings from respondents' regular selling prices.

2. The said offer of respondents' products at reduced prices must be accepted at once or within a limited time.

3. Purchasers of respondents' products are being granted specific dollar reductions from respondents' regular selling prices in consideration of their furnishing the names of other persons as prospective purchasers of respondents' products.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at special or reduced prices, and savings are not granted respondents' customers because of a reduction from respondents' regular selling prices. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

2. Respondents' offer need not be accepted at once or within a limited time. Said merchandise is offered regularly at the represented prices and on the terms and conditions therein stated.

3. Respondents do not reduce the prices of their products from the regular selling prices of such products in consideration of the purchasers thereof furnishing the names of other persons as prospective purchasers of respondents' products. In fact, respondents do not have a regular selling price for their products and respondents thereby utilize this practice to obtain leads for future sales and to mislead purchasers into the belief that they are receiving a reduced price for the referral of names of prospective customers to respondents.

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

PAR. 7. In the further course and conduct of their business, respondents have utilized various promotional devices for the purpose of obtaining leads to persons who will allow respondents' sales representatives into said persons' homes for the purpose of inducing said persons to purchase respondents' products. Among the inducements used to achieve the above purposes is the proffering of an item of "free" merchandise via telephone contact with such prospective customers who thereupon consent to allow respondents' sales representatives to visit their homes in order to deliver the gift.

Such persons who consent to allow the respondents' sales representatives to visit their homes in order to receive the "free" merchandise are not informed during the course of the telephonic contact of the material fact that as a result of receiving the gift, such persons will be subject to

a lengthy sales presentation by Kirby of North Providence, Inc. for respondents' vacuum cleaners and related products, nor is there any disclosure of the identity of corporate respondent Kirby of North Providence, Inc.

Therefore, respondents' statements, representations, acts and practices, and the failure to disclose material facts as aforesaid were and are deceptive acts and practices.

PAR. 8. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their products, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices.

1. In a substantial number of instances and in the usual course of their business, respondents sell, transfer or assign their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

2. In a substantial number of instances through the use of false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, respondents have been able through high pressure sales tactics to induce customers into signing contracts with respondents on the respondents' initial personal contact with the customers.

In many cases, the contracts signed are blank or incomplete at the time of signing. In such a situation, it is highly improbable that the customer was able to make an independent decision on whether or not he should enter into the contract and, therefore, had to rely heavily on the advice and information given to him by respondents.

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

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of vacuum cleaners and related devices of the same general kind and nature as that sold by respondents.

PAR. 10. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and

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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 into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. 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 and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend or arrange for the extension of consumer credit, and for some time last past have regularly extended or arranged for the extension of consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 13. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused and are now causing their customers to execute retail installment contracts, hereinafter referred to as "the contract."

PAR. 14. By and through the use of the contract, respondents, in a number of instances, have failed to:

1. Disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.
2. Disclose the finance charge expressed as an annual percentage rate as required by Section 226.8(b)(2) of Regulation Z.
3. Disclose the downpayment in property made in connection with credit sales and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.
4. Disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.

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5. Make the 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. 15. By and through the use of the contract, respondents have in various instances induced and caused their customers to affix their signatures to such contracts prior to the completion and insertion of all terms and figures relevant to such contract. In such manner the respondents have failed to provide those disclosures required by Section 226.8(a)(b)(c).

PAR. 16. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

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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 Boston 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of the rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kirby of North Providence, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its office and principal place of business located at 1883 Mineral Spring Avenue, North Providence, R.I.

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

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

ORDER

It is ordered, That respondents Kirby of North Providence Inc., a corporation, its successors and assigns, and its officers, and Emanuel Toro individually and as an officer of said corporation trading under said corporation name or any trade name or names, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with advertising, offering for sale, sale and distribution of vacuum cleaners and related parts, attachments and devices or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(a) Any price for said products is a special or reduced price; unless such price constitutes a significant reduction from the regular selling price at which such products have been sold by respondents for a reasonably substantial period of time in the recent, regular course of their business; or misrepresenting in any manner, the savings available to purchasers.

(b) Any offer to sell said products is limited as to time or is limited or restricted in any other manner.

(c) Respondents offer reductions from the regular selling price of said products upon the occasion of the purchaser furnishing the names of other persons as prospective purchasers of such products unless the respondents clearly set forth on the contract the dollar amount of such reduction together with terminology which describes the nature of such reduction from the regular selling price and can affirmatively show that such regular selling price constitutes the price at which respondents

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have sold such products for a reasonably substantial period of time in the recent, regular course of business; or, in any manner, misrepresenting the amount of discounts, commissions, referral fees or allowances of any type receivable by the purchaser of respondents' products.

2. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims of the type covered by Paragraph 1(a) of this order are based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations of the type covered by Paragraph 1(a) of this order can be determined.

3. Failing to disclose to prospective customers, at the time of the initial contact by respondents via telephone call or any other type of contact, the fact that the individual making the call or contact is a representative of respondents, that the purpose of the call is to solicit the sale of said products and that if the prospective customer so agrees, respondents will send a salesman to the home of the prospective customer to demonstrate such products.

4. Representing to prospective customers that they will be provided with a free gift, valuable merchandise, or other consideration, at the time of the prior contact by respondents, unless respondents clearly and conspicuously disclose, orally or in writing, that such gift, merchandise or other consideration will be provided only if the prospective customers consent to allow respondents' sales representatives to visit their homes to demonstrate said products; or in any manner, misrepresenting the conditions, limitations, restrictions or requirements imposed upon the receipt of such free gifts, merchandise or other consideration.

5. Failing to inform the prospective purchaser prior to the signing of a contract wherein the respondents extend or offer to extend or arrange or offer to arrange for the extension of consumer credit that it is respondents' customary practice to sell, transfer, or assign their customers' obligations to various financial institutions, naming the specific financial institution which will receive the contract, if known by respondents, at the time of the sale.

6. Assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has asserted against any assignee or subsequent holder of such note, contract or other documents evidencing the indebtedness.

1. Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

8. Contracting for any sale arising out of a door to door solicitation which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of signing of the contract.

9. Failing to orally disclose prior to the time of sale, and in writing conspicuously and clearly on any conditional sales contract, promissory note or other instrument executed by the buyer that the buyer may rescind or cancel the sale by written notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale. Upon such cancellation the burden shall be on respondent to collect any goods left in the buyer's home and to return any payments received from him. Nothing contained in this right-to-cancel provision shall relieve buyers of the responsibility for taking reasonable care of the goods prior to, and for a reasonable period following, cancellation.

10. Failing to provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

11. Failing to refund immediately all monies or property to customers who have requested contract cancellation in writing within three (3) days from the execution of such contract.

12. Negotiating any conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day of execution by the buyer.

Provided, however, That nothing contained in Paragraphs 7 through 12 of this Order shall relieve respondent of any contractual obligations required by federal law or that law of the state in which the contract is negotiated. When such obligations are inconsistent, respondent may apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required.

COUNT II

It is ordered, That respondents Kirby of North Providence, Inc., a corporation, its successors and assigns, and its officers, and Emanuel

Toro, individually and as an officer of said corporation, trading under said corporate name or trading or doing business under any other name or names, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, or advertisement to aid, promote, 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 date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.
2. Failing to disclose the finance charge expressed as an annual percentage rate, as required by Section 226.8(b)(2) of Regulation Z.
3. Failing to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.
4. Failing to disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.
5. 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.
6. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, 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 corporation shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in (a) the offering for sale or sale of respondents' products or services or in the consummation of any extension of consumer credit or in (b) any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of the 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

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

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

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

IN THE MATTER OF

HAIR ENCORE, INC., TRADING AS HAIR ENCORE, ET AL.

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

Docket C-2591. Complaint, Nov. 1, 1974 — Decision, Nov. 1, 1974

Consent order requiring a Columbia, S.C., promoter of a cosmetic hair replacement system, among other things to cease failing to disclose the medical risks—i.e., discomfort and pain, risk of irritation, infection and skin disease, and permanent scarring of the scalp—involved in its system and to give customers a three-day cooling-off period within which to cancel their contract. Further, 15 percent of respondents' advertising must include disclosures as to the possible deleterious side effects to be encountered.

Appearances

For the Commission: *Robert L. Osteen, Jr.*

For the respondents: *Patrick E. Treacy, Columbia, S.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hair Encore, Inc., a corporation, doing business as Hair Encore, and James D. Wilson, Sr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing

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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 Hair Encore, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of South Carolina with its office and principal place of business located at 1801 Main Street, Jefferson Square, Columbia, S.C.

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

PAR. 2. Respondents are now, and for some time last past have been engaged in the operation of Hair Encore Clinics and promote on their own behalf, among others, the cosmetic hair replacement system (hereinafter sometimes referred to as the "System"). The system involves a surgical procedure whereby prolene sutures are implanted in the scalp to which wefts of synthetic hair are attached.

Hair Encore centers sell and maintain the system, except that the surgical procedure itself is performed by a medical doctor.

Subsequent to the attachment, Hair Encore cuts, styles and maintains the system.

PAR. 3. Respondents' cosmetic hair replacement system constitutes either a cosmetic or a device, or both, as defined in Section 15(d) and (e) of the Federal Trade Commission Act, 15 U.S.C. Section 55(d) and (e).

In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across state lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondents have maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and cause to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the cosmetic hair replacement system, respondents, directly have made numerous statements and representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

Permanent, natural looking.

A process that has virtually none of the shortcomings of transplants, toupees and weaves.

A full head of hair that looks, acts and feels like the real thing.

Hair that doesn't take any more care than your own hair.

You don't have to pamper it. It keeps up with any active lifestyle.

So you can keep that golf date, go sailing, swimming, skydiving.

It'll keep up with you, whatever you do.

Hair Encore offers you the best method known in medical technology today to cover up your baldness * * * beautifully and undetectably.

The wefts are perfectly matched to your own hair under special lighting. So perfectly, no one will ever know it's not really you.

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

1. The hairpiece applied becomes part of the anatomy like natural hair and has characteristics of natural hair, including the following:

a. The same appearance as natural hair upon normal observation and upon extreme close up examination;

b. It may be cared for like natural hair, particularly in that action such as washing, combing, brushing and shampooing may be performed on it in the same manner as might a person with natural hair.

c. The wearer may engage in physical activities with as much disregard for his hairpiece as might a person with natural hair.

2. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the System, and that the customer will not incur charges over and above the charge for installing the System.

PAR. 6. In truth and in fact:

1. The hairpiece applied does not become part of the anatomy like natural hair. The system involves prolene sutures which are stitched into the scalp by a surgical procedure and which may be rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

a. It does not have the same appearance as natural hair in a substantial number of instances. It is often discernible as a hairpiece upon normal observation, and upon extreme close-up examination;

b. It cannot be cared for like regular hair, but requires special care and handling. Strong pulling on the hair, such as may be expected to occur in washing, combing, brushing and shampooing, can cause pain because of the pressure exerted on the sutures in the scalp, may cause bleeding and may cause the sutures to pull out. As a consequence, washing the hair and scalp, foreign particles and dead skin tissue tend

to accumulate on the scalp and become a significant source of irritation. The hair styles into which the hairpiece may be combed or brushed without professional treatments are limited; and

c. The wearer may not engage in physical activities with as much disregard for his hairpiece as might a person with natural hair. The wearer must at all times be careful that the hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

2. The wearer cannot in most instances care for the hairpiece himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgical procedure or the continuing presence of prolene sutures in the scalp may require subsequent visits to a medical doctor. Wearers having some natural hair wefted to the system applied by respondents would have to have a haircut at regular intervals and such hair would be difficult to cut without skilled assistance. A substantial additional charge for such services would be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color dyed, loss of dye through washing and normal wear; thus replacement wefts of hair or hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have. Because of the difficulty in washing the hair and scalp described previously in Paragraph Six, assistance is often required to wash the hair.

The statements and representations set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents have represented in advertisements the asserted advantages of their system, as hereinbefore described. Respondents have represented their system to be relatively painless, and in no case have respondents' newspaper advertisements disclosed:

1. That clients may experience discomfort and pain as a result of the surgical procedure, from the prolene sutures themselves, and from pulling normally incident to wearing the hairpiece;

2. That clients will be subject to the risk of irritation, infection, and skin diseases as a result of the surgical procedure and as a result of the prolene sutures remaining in the scalp; and

3. That permanent scarring to the scalp may result from the required surgical procedures, and as a result of the prolene sutures remaining in the scalp.

The consequences described in this Paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to, rejection of the prolene sutures through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said Paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their hair replacement system, respondents entice members of the purchasing public to their center with advertisements such as, "A full head of hair, permanent, natural looking. In four hours." and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their center. When members of the purchasing public have visited the center, they are persuaded to sign a contract for the application of the system, and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the prolene sutures in the scalp. Persons are urged to sign such contracts and make such downpayments, through the use of sales presentations employing the following practice, among others:

Inducing prospects to sign contracts and/or make downpayments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the prolene sutures being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading and the acts and practices set forth in such paragraph were and are unfair, false and deceptive within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial compe-

tition in commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the prolene sutures in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hair Encore, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its office and principal place of business located at 1801 Main Street, Jefferson Square, Columbia, S.C.

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

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

ORDER

It is ordered, That respondents Hair Encore, Inc., a corporation, doing business as Hair Encore or any other trade name or names, its successors and assigns, and James D. Wilson, Sr., individually and as an officer of said corporation (hereinafter sometimes referred to as "respondents"), and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any hair replacement product or process involving surgical implants (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That after the system has been applied, the hair applied becomes part of the anatomy like natural hair, teeth, and fingernails and has the following characteristics of natural hair:

a. The same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;

b. It may be cared for like natural hair where care involves possible pulling on the hair; and

c. The wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.

2. That after the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system and that the customer will not incur maintenance costs over and above the cost of applying the system.

It is further ordered, That respondents, in advertising and in all oral sales presentations, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of prolene (or any substitute) sutures in the scalp, to which hair is affixed.

2. By virtue of the surgical procedure involving implantation of prolene (or any substitute) sutures in the scalp, and by virtue of the prolene (or any substitute) sutures remaining in the scalp, there is a high probability of discomfort and pain, and a risk of infection, skin disease and scarring.

3. The system has been in use for too short a period of time to determine to a reasonable medical certainty the extent or seriousness of the above described side effects, or whether there are other side effects.

4. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in Subparagraph Two of this paragraph, and such care may involve additional costs for medications and assistance.

5. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided, however,* That in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Attention: This application involves surgery whereby permanent sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician (this statement is required by Order of the Federal Trade Commission).

No less than 15 percent of such advertisement shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously

from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, Subparagraphs One through Five, thereof, and that respondents require that such prospective purchasers, subsequent to receipt of such disclosure sheet, consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the probabilities of discomfort and pain, and risks of infection, skin disease, and scarring.

It is further ordered, That no contract for application of respondents' system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents, or after the day on which said contract for application of the system was executed, whichever day is later, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician or after the day on which said contract for application of the system was executed, whichever day is later.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician, or after the day on which said contract for application of the system was executed, whichever day is later.

4. Respondents shall obtain from each purchaser a certificate signed by the physician who was consulted as required by this order, such certificate specifying that the said physician has explained to the purchaser the nature of the surgery to be done, and has advised him of the probabilities of discomfort and pain, and

risks of infection, skin disease and scarring, and specifying the date and approximate time of the consultation; and respondents shall retain all such certificates for three years.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, serve a copy of this order upon each present and every future licensee or franchisee, and upon each physician participating in application of respondents' system, and obtain written acknowledgement of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this order. Respondents shall retain such acknowledgements and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' System.

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

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

It is further ordered, That respondents forthwith distribute a copy of this order to each of their operating divisions, offices, department or affiliated corporation.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale or distribution of respondents' system or in any aspect of preparation,

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

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

IN THE MATTER OF

RONNIE RAY DOING BUSINESS AS RONNIE RAY'S NATIONAL
HEALTH STUDIOS

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

Docket C-2592. Complaint, Nov. 4, 1974 — Decision, Nov. 4, 1974

Consent order requiring a Dallas, Tex., operator of a physical fitness and/or health clubs, among other things to cease making false weight and inch loss claims for their "body wrap." In addition, respondents are required to disclose to prospective enrollees the nature of their "body wrap" and that results are temporary unless a required diet is followed.

Appearances

For the Commission: *Jim B. Brookshire.*

For the respondent: *L. Lynn Elliott, Thompson & Elliott, Dallas, Tex.*

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 Ronnie Ray, an individual trading and doing business as Ronnie Ray's National Health Studios, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a

proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ronnie Ray is an individual, trading and doing business as Ronnie Ray's National Health Studios, organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4420 Lovers Lane, Dallas, Texas.

PAR. 2. Respondent is now, and for some time last past has been engaged in the operation of physical fitness and/or health clubs, and in the advertising, offering for sale, and sale of memberships and/or related services to the public in said physical fitness and/or health clubs.

PAR. 3. In the course and conduct of his business as aforesaid, respondent has disseminated, and caused the dissemination of certain advertisements concerning the said memberships and/or related services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to newspapers of general circulation for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said memberships and/or related services; and has disseminated and caused the dissemination of advertisements concerning said product by various means, including but not limited to newspapers of general circulation for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said memberships and related services in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative of said statements and representations in said advertisements disseminated as aforesaid, but not all inclusive thereof, are the following:

INCHES OFF FAST

Now! Your way to an instant new figure
 You can be Bikini Slim in Only 60 minutes
 Introducing ONE HOUR European "Quick Figure"
 LOSE up to 15 inches in just one hour during your first treatment * * *

It's easy as 1. You spend 5 minutes in the whirlpool mineral spa. 2. Then you are ever so carefully wrapped with our exclusive tape wrap, moistened with the European "Quick Figure" solution. 3. You do nothing but relax, nap or read a book for one hour while you are inched away * * * from the woman you are to the woman you want to be.

PAR. 5. By and through the use of said advertisements, and others of similar import and meaning, but not expressly set out herein, and by oral statements and representations made by salesmen, agents, and representatives, respondent has represented, and is now representing, directly or by implication, that:

1. In some short period of time, users of this service are likely to achieve a substantial reduction in body size or weight.

2. Respondent's program will slenderize, beautify, and proportion peoples' figures without these people having to diet.

3. Respondent's "body wrap" will tone and firm human tissue, including muscles, and/or induce weight loss or loss of inches.

4. Patrons can lose up to fifteen inches in one visit to respondent's health club or can attain other stated changes in body size, configuration or weight by means of a "body wrap."

5. Patrons will lose inches or weight permanently by means of the "body" program.

PAR. 6. In truth and in fact:

1. Few, if any, members are likely to achieve a permanent specified reduction in body size or in weight by means of a "body wrap."

2. Respondent's "body wrap" will not slenderize, beautify and proportion peoples' figures permanently unless these people adhere to a diet.

3. Respondent's "body wrap" will not tone and firm human tissue, including muscles, or induce permanent weight loss or loss of inches.

4. Patrons cannot lose up to 15 inches in one visit to respondent's salons, nor are other stated changes in body size, configuration or weight possible in specified periods of time by means of a "body wrap."

5. Any loss of inches or weight is only temporary in nature.

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

PAR. 7. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce with corporations, firms, and individuals in the sale of memberships and related services in physical fitness and/or health clubs, said memberships and services being of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements and representations, 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 into the purchase of health club memberships and/or related services by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of the respondent as set forth above were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair

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methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

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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 the complaint which the Dallas 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 thereunder accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Ronnie Ray, is an individual doing business as Ronnie Ray's National Health Studios with his principal place of business located at 4420 Lovers Lane, Dallas, Texas.
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 proposed respondent, Ronnie Ray, individually and doing business as Ronnie Ray's National Health Studios, and proposed respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering

for sale, sale or distribution of physical fitness and/or health clubs memberships and related services, do forthwith cease and desist from:

1. Representing, directly or by implication:

A. That any person participating in respondent's "body wrap" program will achieve a permanent specified reduction in body size or weight.

B. That respondent's "body wrap" will, in any manner, slenderize, beautify and proportion persons' figures or aid in reducing body weight unless respondent discloses in conjunction therewith that such program includes a required diet.

C. That respondent's "body wrap" program will (1) tone and firm human tissue, including muscles, (2) induce weight loss or loss of inches by any means; unless such representation is fully substantiated by controlled scientific tests conducted by independent experts, and the results are available for inspection by the general public.

D. That respondent's "body wrap" program will remove up to 15 inches in a single visit or produce any other stated change in body size, configuration or weight by means of a "body wrap."

E. That patrons will lose inches or weight permanently as a result of the "body wrap" program.

2. Failing to disclose clearly, conspicuously, completely, and accurately, both orally and in writing, before selling any person a "body wrap:"

A. The nature of respondent's "body wrap" programs and equipment.

B. That any loss of inches or weight is merely temporary in nature and will reappear unless such person follows a required diet.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future employees, instructors or other persons engaged in the offering for sale, or sale of respondent's services, or in any aspect of preparation, creation or placing of advertising.

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

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

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

IN THE MATTER OF

S-H-S MOTOR SALES CORPORATION, ET AL.

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

Docket C-2593. Complaint, Nov. 4, 1974 - Decision, Nov. 4, 1974

Consent order requiring a Kansas City, Mo., dealer of new and used cars, trucks and other products, among other things to cease disseminating advertisements wherein false, misleading or deceptive statements are made concerning guarantees or warranties.

Appearances

For the Commission: *Tommie W. Wakefield.*

For the respondents: *William J. Aimonette, Brown, Koralchik, Fingersh & Sildon, Kansas City, Mo.*

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 S-H-S Motor Sales Corporation, a corporation, and Harry Schwartz and Sherman Schwartz, 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 S-H-S Motor Sales Corporation, doing business as Midwest Motors, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 601 Truman Road, Kansas City, Mo.

Respondents Harry Schwartz and Sherman Schwartz are officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, service, and distribution of new and used automobiles, trucks, and other products in commerce as "commerce" is defined by the Federal Trade Commission Act. Respondents' volume of business has been and is substantial.

PAR. 3. In the course and conduct of their business as aforesaid and for the purpose of promoting the sale of new and used automobiles, trucks and other products, respondents have made certain statements and representations in advertising media concerning various new and used car warranties which advertisements are deceptive and unfair in that, by omission, respondents have led the consumer to believe he is receiving a much better warranty than in truth is available to him.

PAR. 4. Representative of such advertising statements seen in Kansas and Missouri on WDAF-TV, Channel 4, are the following:

A. Midwest Dodge makes sure each car is in top condition * * * and then * * * and only then does Midwest give it our exclusive double guarantee * * * 5 years, 50,000 miles and a guaranteed low price * * *

B. I've been in business over 40 years * * * when I tell you you're getting a good deal on a quality used car * * * you can depend on it * * * If not, I couldn't afford to give you Midwest's exclusive 5 year, 50,000 mile used car warranty.

C. We're jammed at Midwest with a big selection of hundreds of new Dodges * * * Like this '73 Sport with all the extras including air conditioning, plus a 7-year, 70,000-mile warranty * * *

D. And with every new car, you get Midwest's exclusive 7-year, 70,000-mile warranty * * * plus a 40-year reputation for fair and honest dealing * * *

PAR. 5. In truth and in fact the 5-year, 50,000-mile warranty states as follows:

The automobile covered by this warranty is guaranteed by MIDWEST MOTORS for the exclusive benefit of the purchaser for a period of thirty (30) days from the date of delivery, or one thousand (1,000) miles, whichever occurs first. This guarantee means that the dealer will make any repairs deemed necessary by the buyer in the dealer's shop, at a cost to the buyer of only 50% of the regularly established price on both parts and labor, except where such repairs have become necessary by abuse, negligence, or collision, the owner to pay the remaining 50% in cash at the time work is completed.

In addition to the above, MIDWEST MOTORS for the balance of 5 years or 50,000 miles, whichever occurs first, agrees to give the above named purchaser a discount of 20% of regularly established price on both parts and labor for any repairs the buyer deems necessary (not including body repairs) but to include normal maintenance such as tune up, front end alignment, wheel balance, etc. No guarantee is made in respect to mileage, tires and tubes, glass, batteries, speedometers, trade accessories, or to repairs of any nature made at any shop other than Midwest Motors.

PAR. 6. In truth and in fact the 7-year, 70,000-mile warranty is a lifetime New Car Lubrication Guarantee made by the Quaker State Oil Refining Corporation to repair or replace at its expense for the duration of the original purchaser's ownership, any parts of said vehicle that require periodic lubrication services, which fail or experience abnormal wear during normal use of vehicle, if the purchaser will meet certain conditions such as: exclusively using Quaker State Motor oil and lubricants in accordance with the manufacturer's specified intervals; having all of the work done by the authorized dealer from whom the car was purchased or another authorized dealer at least 50 miles away; servicing the chassis, wheel bearings and universal joints in accordance with the manufacturer's specified intervals; changing the lubricants in the transmission and the rear axle housing at the termination of the manufacturer's warranty and specified periods thereafter; replacing oil filter and air cleaner element according to manufacturer's recommendations; and, in the event of any claims for repairs under this guarantee, the owner must provide the company with evidence that the above mentioned services were performed as specified. The guarantee does not include vehicles owned or used by business firms, municipalities, or governmental agencies. It also does not include valve grinding; ignition, fuel or electrical system parts; brakes; shocks; instruments; tires; wheel alignment; 4-wheel drive vehicles; or any automobile on which the speedometer mileage has been altered.

PAR. 7. The aforesaid acts and practices of respondents were and are in violation of the Federal Trade Commission Act, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning 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 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, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent S-H-S Motor Sales Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 601 Truman Road, Kansas City, Mo.

Respondents Harry Schwartz and Sherman Schwartz are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondent S-H-S Motor Sales Corporation, a corporation, its successors and assigns, and its officers, and respondents Harry Schwartz and Sherman Schwartz, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of new or used automobiles, trucks or any other products in

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement wherein any warranty or guarantee is mentioned or shown which does not clearly and conspicuously disclose the following terms and conditions:

- (1) The identity of the guarantor or warrantor;
- (2) The effective date of the warranty or guarantee;
- (3) The duration of the warranty or guarantee and any of its parts, if different;
- (4) The parts or materials included within the warranty or guarantee;
- (5) The parts or materials specifically excluded from the warranty or guarantee;
- (6) The manner in which the guarantor or warrantor will perform such repair, replacement or refund; and
- (7) The obligations imposed upon the purchaser to avail himself of the guarantee or warranty such as any payment for services or labor charges, partial payment for parts or the exclusive use of any product or service.

2. Disseminating or causing the dissemination of any advertisement wherein false, misleading or deceptive statements are made concerning the issuance or existence of any guarantee or warranty.

3. Misrepresenting in any manner the nature, terms or conditions of any guarantee or warranty.

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

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

It is further ordered, That the individual 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 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

NU-PRIME MARKETING SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2594. Complaint, Nov. 4, 1974—Decision, Nov. 4, 1974*

Consent order requiring a St. Petersburg, Fla., retailer and wholesale distributor of aluminum replacement windows and other aluminum siding products, among other things to cease misrepresenting the savings or benefits to be derived from their products and misrepresenting their guarantees.

Appearances

For the Commission: *David E. Krischer.*

For the respondents: *Thomas K. Riden, St. Petersburg, Fla.*

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 Nu-Prime Marketing Systems, Inc., a corporation, and Herbert Anderson, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Nu-Prime Marketing Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and principal place of business located at 10590 Oak Street, N.E., St. Petersburg, Fla.

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

PAR. 2. Respondents are now, and for some time last past have engaged in the advertising, offering for sale, sale and distribution of aluminum replacement windows and other aluminum siding products to consumers through a retail outlet. In addition, respondents are now, and for some time last past have been engaged in the sale and distribution of aluminum replacement windows and other aluminum siding products

to distributors. Said distributors purchase respondents' aluminum products under a distribution agreement whereby respondents agree to provide perpetual sales, management and technical assistance to distributors, and distributors agree to sell minimum quotas of respondents' aluminum products.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in other States of the United States and have sent and received sales, advertising and training aids to and from their distributors and thereby maintain and at all times mentioned herein have maintained, substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of aluminum window replacements and other aluminum siding products, respondents have made numerous statements and representations in newspapers and promotional materials. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

* * * * *

NUPRIME stops loss of heating and cooling dollars.

* * * * *

They save up to 30 percent of your heating and cooling costs.

* * * * *

They pay for themselves in reduced fuel costs alone.

* * * * *

Make no mistake, NUPRIME replacement windows *will cut your fuel expenses considerably*; make your home more comfortable; and more attractive, too.

* * * * *

On a NUPRIME replacement window, you save up to 40 percent over wood replacement windows * * * and 20-30 percent less than other types. Here's an investment which pays for itself in savings and maintenance, heating and air conditioning costs.

* * * * *

NU PRIME is the only replacement window built of such high standards that it's guaranteed for 15 years.

* * * * *

They never need painting, are easy to clean and will make your house look years younger.

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning but not

expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented and are now representing directly or by implication that:

1. Installation of replacement windows sold by respondents will cut fuel expenses considerably and in fact will reduce fuel costs by up to thirty (30) percent.
2. Respondents' replacement windows and their installation are fully or unconditionally guaranteed for 15 years.
3. Respondent is the guarantor of said guarantee.
4. Replacement windows sold by respondent will never need repainting.

PAR. 6. In truth and in fact:

1. Respondents cannot predict in advance any precise percentage of savings in fuel costs that might be expected to result from the installation of their replacement windows. Since such savings will depend on the quality of construction and age of each home and since no installation will be alike, fuel savings are indeterminable.
2. Respondents' 15 year guarantee is not unconditional nor does it cover installation. Said guarantee is limited and restricted in certain respects which limitations and restrictions were not disclosed in many of respondents' advertisements.
3. Respondent is not the guarantor of said guarantee.
4. Replacement windows sold by respondents will require painting.

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

PAR. 7. In the course and conduct of their aforesaid business, respondents have disseminated the aforesaid statements and representations to their distributors.

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

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the

purchase of substantial quantities of respondents' products and services by reasons 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 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 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 Atlanta 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Nu-Prime Marketing Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 10590 Oak Street, N.E., St. Petersburg, Fla.

Respondent Herbert Anderson is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. 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 respondents Nu-Prime Marketing Systems, Inc., a corporation, its successors and assigns, and its officers, and Herbert Anderson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, divisions or other device, or through its distributors, in connection with the advertising, offering for sale, sale or distribution of aluminum replacement windows, aluminum siding, and any other products or services in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That any specific percentage or any specific amount of savings in fuel bills will result from the installation of respondents' replacement aluminum windows, or misrepresenting in any manner the savings or benefits to be derived from the purchase of respondents' products.
2. That respondents' products and installation thereof are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.
3. That aluminum replacement windows sold by respondents will never need painting; or misrepresenting in any manner, the painting or other maintenance required for respondents' products.

It is further ordered, That respondents no longer disseminate suggested advertisements, promotional materials or any other materials containing statements or representations prohibited by this order, to its distributors or to any other aluminum replacement window dealers for whom respondents have been providing sales, management or technical assistance.

It is further ordered, That respondents maintain files containing all inquiries or complaints made after the effective date of this order from any source relating to acts or practices prohibited by this order for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future distributors and that respondents secure a signed statement from each said distributor wherein each said distributor agrees to abide by the terms of said 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 his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

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

IN THE MATTER OF

THE SOCIETY OF THE PLASTICS INDUSTRY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2596. Complaint, Nov. 4, 1974—Decision, Nov. 4, 1974

Consent order requiring a trade association and 25 manufacturers of certain plastics products, among other things to alert users of cellular (or foamed) plastics products to the serious hazards these products may present in case of fire; to cease using descriptive terms which could mislead users as to the performance of the products under actual fire conditions; and to establish a \$5 million public research program into the flammability of these products.

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Appearances

For the Commission: *Miriam A. Bender, Eric M. Rubin and Edwin Dosek.*

For the respondents: *Keller & Heckman*, Washington, D.C., for the Society of the Plastics Industry, Inc. *Thomas D. Kent*, Morristown, N.J., for Allied Chemical Corporation. *William Simon & John Bodner, Howery, Simon, Baker & Murchison*, Washington, D.C. *Thomas C. Cochran & Barry Lipson*, Pittsburgh, Pa. for ARCO Polymers, Inc. *Thomas A. Dieterich, Shearman & Sterling*, New York, N.Y. *Robert E. Dunn, Parsippany, N.J.*, for BASF Wyandotte Corporation. *Ronald J. Finch, Cravath, Swaine & Moore*, New York, N.Y. *Arnold M. Lerman & Jack B. Owens, Wilmer, Cutler & Pickering*, Washington, D.C. for Baychem Corporation. *M. D. Blackwell & Larry L. McMullen, Blackwell, Sanders, Matheny, Weary & Lombardi*, Kansas City, Mo. for Cook Paint and Varnish Co. *Harold F. Baker, Howery, Simon, Baker & Murchison*, Washington, D.C. for the Dow Chemical Company. *William E. Kirk, Wilmington, Del. John S. Koch and Daniel M. Gribbon*, Washington, D.C. for E. I. Dupont De Nemours & Co., Inc. *J. E. Fogarty, T. H. Parke & J. L. Tomaselli*, White Plains, N.Y. for the Flintkote Company. *Edward T. Russell*, Leominster, Mass. *Emery Morton & Alan Shaver*, Leominster, Mass. *William E. Willis, Sullivan & Cromwell*, New York, N.Y. for Foster Grant Company, Inc. *William E. Willis, Sullivan & Cromwell*, New York, N.Y. *Tress E. Pittenger, John H. Dalton & Dennis H. Markusson*, Akron, Ohio for The General Tire & Rubber Company. *O. Mario Favorito*, Cambridge, Mass. *Leo A. Larkin*, New York, N.Y. for W. R. Grace & Co. *A. W. Chambers*, Stamford, Conn. for Hooker Chemicals & Plastics Corp. *Robert D. Wilson*, Houston, Tex. for Jefferson Chemical Company, Inc. *Charles Burton, Battle, Fowler, Lidstone, Jaffin, Pierce & Kheel*, New York, N.Y. for Millmaster Onyx Corporation. *Edward T. Tate, Reed, Smith, Shaw & McClay*, Washington, D.C. for Mine Safety Appliances Company. *Harold F. Baker, Howery, Simon, Baker & Murchison*, Washington, D.C. for Monsanto Company. *William A. Sutton, Cravath, Swaine & Moore*, New York, N.Y. *Arnold M. Lerman & Jack B. Owens, Wilmer, Cutler & Pickering*, Washington, D.C. for Olin Corporation. *William A. Kreutz*, Toledo, Ohio for Owens-Corning Fiberglas Corporation. *Robert R. MacIver*, Pittsburgh, Pa. for PPG Industries, Inc. *George S. Flint*, New York, N.Y. for Tenneco Chemicals, Inc. *Justin J. Karl*, New York, N.Y. for Union Carbide Corporation. *Lawrence D. Lenihan, Arthur, Dry & Kalish*, New York, N.Y. for Uniroyal, Inc. *Stuart C. Gaul*, Pittsburgh, Pa. for United States Steel Corporation. *Henry P. Sailer, Covington & Burling*, Wash-

ington, D.C. *Lawrence W. Klute*, Kalamazoo, Mich. for The Upjohn Company. *H. Richard Penn, Bachner, Tally & Mantell*, New York, N.Y. *Robert D. Hughes*, New York, N.Y. for Witco Chemical Corporation.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, hereinafter more particularly described and designated 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 companies and members of the class are engaged in manufacturing, processing, fabricating, installing, offering for sale, selling or distributing certain plastics products or their chemical components, defined herein to include cellular polyurethane and all forms of polystyrene and its copolymers and chemical components of such products, which are specified in the design, purchased or used in the construction and furnishing of homes, buildings and other structures (hereinafter referred to as "Plastics Products").

PAR. 2. Respondent companies are as follows:

Respondent Allied Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. The business address of its principal office and place of business is P. O. Box 1057R, Morristown, N.J.

Respondent BASF Wyandotte Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 100 Cherry Hill Road, Parsippany, N.J.

Respondent Baychem Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 425 Park Avenue, New York, N.Y.

Respondent Cook Paint and Varnish Co. 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 1412 Knox Street, North Kansas City, Mo.

Respondent the Dow Chemical Company 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 Bennett Building, 2030 Dow Center, Midland, Mich.

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Respondent E. I. duPont de Nemours & Co., 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 100 Market Street, Wilmington, Del.

Respondent the Flintkote Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 400 Westchester Avenue, White Plains, N.Y.

Respondent Foster Grant Co., 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 289 No. Main Street, Leominster, Mass.

Respondent the General Tire & Rubber Company 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 One General Street, Akron, Ohio.

Respondent W. R. Grace & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 62 Whittemore Avenue, Cambridge, Mass.

Respondent Hooker Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1515 Summer Street, Stamford, Conn.

Respondent Jefferson Chemical Company, 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 3336 Richmond Avenue, Houston, Tex.

Respondent Millmaster Onyx Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 99 Park Avenue, New York, N.Y.

Respondent Mine Safety Appliances Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 400 Penn Center Boulevard, Pittsburgh, Pa.

Respondent Monsanto Company 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 No. Lindbergh Blvd., St. Louis, Mo.

Respondent Olin Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia,

with its principal office and place of business located at 120 Long Ridge Road, Stamford, Conn.

Respondent Owens-Corning Fiberglas Corporation 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 Fiberglas Tower, Toledo, Ohio.

Respondent PPG Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at One Gateway Center, Pittsburgh, Pa.

Respondent Rohm & Haas Company 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 Independence Mall West, Philadelphia, Pa.

Respondent Sinclair-Koppers Company 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 Koppers Building, Pittsburgh, Pa.

Respondent Tenneco Chemicals, 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 280 Park Avenue, New York, N.Y.

Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 270 Park Avenue, New York, N.Y.

Respondent United States Steel Corporation 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 600 Grant Street, Pittsburgh, Pa.

Respondent Uniroyal, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Naugatuck, Conn.

Respondent the Upjohn Company 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 7000 Portage Road, Kalamazoo, Mich.

Respondent Witco Chemical Corporation 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 277 Park Avenue, New York, N.Y.

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PAR. 3. The several hundred companies listed in the Society of Plastics Industry, Inc., 1970-1971 Directory, under the heading: "SPI Company Members in the United States," which companies are identified therein as engaged in manufacturing, processing, fabricating, installing, offering for sale, selling or distributing Plastics Products as defined herein, share a community of interest and constitute a class for purposes of this proceeding. The number of such companies is so numerous that joinder of all members of the class as individually named party respondents is impractical. Each member of said class is adequately represented and can be defended in this proceeding by the named respondents, which are named individually as respondents and as representatives of the entire class.

PAR. 4. Respondent associations are as follows:

A. Respondent The Society of the Plastics Industry, Inc., (hereinafter "SPI"), is organized as a not-for-profit corporation and exists under and by virtue of the laws of the State of New York. Its principal office and place of business is located at 250 Park Avenue, New York, N.Y. Respondent SPI is a trade association organized in 1937 to promote the application and use of plastics. It has some 1,200 industry members composed in large part of firms which manufacture, process, and market plastics products or materials, chemical components thereof, or equipment used in such manufacturing or processing, including the several hundred firms of the class which perform such operations with respect to Plastics Products as defined herein. Respondent SPI has been and is now engaged through various operating units in a wide range of activities of mutual interest to its members, including, but not limited to providing a means for collective action on the part of member companies. For example, through members' collective action in conjunction with others, hundreds of codes and regulations of all kinds have been modified or rewritten by numerous regulatory bodies or officials, thus opening or expanding market opportunities for plastics. In addition, technical data, test methods and standards have been developed by a number of SPI operating units and standards have been proposed by such units for promulgation by respondent American Society for Testing and Materials and by other bodies concerned with standards. Certain respondent companies and other members of the class actively participate in the management and operation of respondent SPI and of the SPI Cellular Plastics Division, and are or have been active participants in presenting and implementing the views and interests of the entire class in the management and operation of such units.

B. Respondent American Society for Testing and Materials (hereinafter "ASTM"), is organized as a not-for-profit corporation and exists

under and by virtue of the laws of the State of Pennsylvania. Its principal office and place of business is located at 1916 Race Street, Philadelphia, Pa., and it was originally formed in 1898. It formulates and disseminates standards and test methods by which the physical properties and performance characteristics of a wide range of products (*e.g.*, metals, cement, glass, petroleum products, paper, woods, rubber, textiles, plastics and various chemicals) are, or may be determined, evaluated, predicted or described. Certain respondent companies and other members of the class are members of, or have representatives or employees who are members of or participate in respondent ASTM, and in the process by which certain of that organization's standards and test methods have been and are formulated and developed. In particular, said companies or their representatives or employees are now, or in the past have been, members of ASTM Committee D-20 on Plastics or ASTM Committee E-5 on Fire Tests of Materials in Construction, or both, and of various subcommittees or sections of such or other committees, and are now, or in the past have been, active participants in presenting and implementing the views and interests of the entire class in the management and operation of such units.

PAR. 5. In the course and conduct of their business each respondent company and other members of the class has caused, and now causes, its plastics products to be shipped and distributed from its place of business or other points of manufacture or storage located in various States of the United States to purchasers and users thereof located in various other States of the United States. Said respondents and other members of the class have promoted and induced the specification, purchase and use of plastics products in the construction and furnishing of homes, buildings and other structures by means of their membership and participation, whether directly or through representation by others, in the operation and management of respondent associations, through brochures and other sales promotional materials transmitted by means of the United States mails, through specification sheets and advertisements published in Sweet's Architectural Catalog File, or in other trade publications of general circulation, and by various other means. Accordingly, each of the respondent companies and other members of the class has maintained, and now maintains, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their businesses, as aforesaid, each of the respondent companies and other members of the class, at all time referred to herein, has been in substantial competition in commerce with the other members of the class and with other corporations,

firms, and individuals, in the sale and distribution of plastics products as defined herein, and of other products specified in the design, purchased or used in the construction and furnishing of homes, buildings and other structures.

PAR. 7. In the course and conduct of its business and operations, respondent SPI, actively promotes and has actively promoted the marketing of plastics products by taking an active part in developing and disseminating test methods and standards and by publishing and distributing, by means of the United States mails, brochures, directories and other promotional literature and materials to induce the specification, purchase and use of plastics products throughout the United States. Such activity of respondent SPI has provided respondent companies and other members of the class with a means and instrumentality by which they have promoted and marketed their plastics products throughout the United States. Accordingly, the said practices, activities and interests of respondent SPI are in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of its business and operations, respondent ASTM has been and is now engaged in the offering for sale, sale and distribution of its various test methods, standards and materials, including those pertaining to the physical properties and performance characteristics of plastics products marketed by respondent companies and other members of the class. Such test methods, standards and materials are shipped or distributed by means of the United States mails and by other means from respondent ASTM's office in Philadelphia, Pa., to purchasers and users thereof located in various other States of the United States. Through and by means of the development and dissemination of the test methods, standards and materials, as aforesaid, respondent ASTM has provided respondent companies and other members of the class with a means and instrumentality by which they have promoted and marketed their plastics products throughout the United States. Accordingly, the said practices, activities and interests of respondent ASTM are in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondents have cooperated and acted together in providing the means and instrumentalities and in carrying out or acquiescing in the acts and practices hereinafter set forth. The activities of respondent associations have been dominated or unduly influenced by respondent companies and other members of the class in providing said means and instrumentalities and in carrying out or acquiescing in the said acts and practices. As a consequence, the said activities of respondent asso-

ciations constitute commercial practices and the respondent associations have become infected with a commercial intent.

PAR. 10. The Cellular Plastics Division of respondent SPI was established in Nov. 1954. Among its principal pursuits was the development of test methods to be used in determining, evaluating, predicting or describing the physical properties or performance characteristics of plastics products. One area for which test methods were developed by respondent SPI and its members was that of flammability. Working jointly and in concert with respondent ASTM, respondent SPI, through its Cellular Plastics Division and with certain respondent companies and other members of the class, was instrumental in the promulgation in 1959 of the flammability test standard designated as ASTM D-1692.

PAR. 11. Essentially, the ASTM D-1692 test, including subsequent revisions, is a small scale laboratory screening procedure which originally specified that plastics materials tested thereunder could be reported or classified by the descriptive terminology: "burning," "non-burning," or as "self-extinguishing" (as the case may be) under the test. Later revisions of the test, in 1967 and 1968, among other things, have eliminated the "non-burning" classification from the descriptive terminology. Following its promulgation, ASTM D-1692 and the descriptive terminology specified therein have been, and are now being widely utilized by respondent companies and other members of the class in the marketing of plastics products to determine, evaluate, predict or describe the burning characteristics thereof. Among and including, but not necessarily limited to the methods and forms of such use by respondent companies and other members of the class are specification sheets and promotional materials published and disseminated as aforesaid.

PAR. 12. In addition to ASTM D-1692, other small scale test methods and standards for surface flammability promulgated by respondent ASTM provide that Plastics Products tested by the method specified therein may be described as "non-burning," "self-extinguishing," or both, as the case may be. Included, but not necessarily limited to the test methods and standards providing for such descriptive terminology or expressions are those designated: ASTM D-568, 635, 757 and 1433. Other test methods and standards promulgated for surface flammability of plastics products, but which do not provide for the aforesaid descriptive terminology or expressions to be used, include but are not necessarily limited to the following: ASTM C-209, ASTM D-626, 1230, 1310 and 1361, ASTM E-108, 119, 162 and 286. The aforesaid test standards and the descriptive terminology and expressions when provided for therein have been and are now being widely utilized by many

respondent companies and other members of the class in the marketing of various plastics products in specification sheets and promotional materials published and disseminated as aforesaid.

PAR. 13. Prior to the expanded and widespread use of plastics products in building construction, the standard method for testing surface-burning characteristics of conventional or traditional building materials was ASTM E-84, which was promulgated by respondent ASTM in 1950. This test, also known as the "Steiner tunnel" test, has been and is now widely utilized and relied upon by code officials, architects, building contractors, fire and insurance officials and others in the specification, purchase or use of building materials. It has been and is now widely utilized in building codes throughout the United States for determining, evaluating, predicting or describing the burning characteristics of materials to be used in such structures. Materials tested under ASTM E-84 are evaluated as follows: Similarly-tested asbestos cement board and select grade red oak flooring are arbitrarily assigned flame spread ratings of 0 and 100, respectively. If the flame spread of the specimen being tested is equal to that of red oak, it is classified and may be described under the test as having a flame spread of 100; if twice as great, then 200. A flame spread of 25, for example, would mean that the flame spread of the specimen tested was only one quarter that of red oak and could be described as "25 flame spread." A flame spread of 25 or less under this test standard qualifies a construction material to be classified as "noncombustible" under a substantial number of building codes in effect in localities throughout the United States. Certain of the plastics products as defined herein have been so classified under this test. ASTM E-84 has been, and is now being, widely utilized by respondent companies and other members of the class in the marketing of plastics products to determine, evaluate, predict or describe the burning characteristics thereof. Among and including, but not necessarily limited to the methods and forms of such use are specification sheets and promotional materials published and disseminated as aforesaid.

PAR. 14. Commencing in the early 1960's and continuing particularly from 1967 through to the present, the increasing use of plastics products has been encouraged and fostered by the development, adoption or use of the several aforesaid ASTM standards and test methods through the joint or concerted action of respondent associations, respondent companies and other members of the class, and by the widespread dissemination and publication of specification sheets and sales promotional materials containing references to and reliance upon said standards and to such descriptive terminology or expressions as "self-extinguishing," "nonburning," "25 flame spread" or terms of similar import, in *Sweet's*

Architectural Catalog File and various other trade publications utilized and relied upon by specifiers, purchasers and users of such products.

PAR. 15. By and through their separate or collective publication, dissemination or use, or their acquiescence therein, of the aforesaid ASTM test standards and descriptive terminology in the marketing of plastics products, respondents, separately or collectively, have represented, directly or indirectly:

(a) That the aforesaid ASTM test standards are reliable and accurate methods for determining, evaluating, predicting or describing the burning characteristics of plastics products under actual fire conditions.

(b) That the aforesaid descriptive terminology and expressions, including but not limited to "non-burning," "self-extinguishing," "25 flame spread," or the like, reliably and accurately describe the burning characteristics of plastics products under actual fire conditions.

PAR. 16. In truth and in fact:

(a) The aforesaid ASTM test standards are neither reliable nor accurate tests for determining, evaluating, predicting or describing the burning characteristics of plastics products under actual fire conditions.

(b) The aforesaid descriptive terminology and expressions, including "non-burning," "self-extinguishing," "25 flame spread," and the like, neither reliably nor accurately describe the burning characteristics of plastics products under actual fire conditions.

Therefore, said statements, representations, acts and practices of respondents, separately or collectively, in using, or in acquiescing in the manner and form of use of the tests, standards, descriptive terminology and expressions, as aforesaid, have been and are, unfair, false, misleading and deceptive.

PAR. 17. More than one billion pounds of plastics products as defined herein were marketed in 1972 for use in construction and home furnishings, an increase of approximately 20 percent over 1971. Examples of such uses include insulation, furniture cushioning and bedding, panels and siding, cabinets, chairs, tables, pipes and lighting and plumbing fixtures. The construction and furnishings markets for such products have been growing steadily in recent years and further increases are projected for the future. Plastics products have been and are specified, purchased and used in such markets as alternatives to more conventional and traditional materials such as wood, glass, cotton and other products and materials.

PAR. 18. The plastics products defined herein are organic materials and, as such, are combustible. Once ignited, they burn intensely and frequently produce some or all of the following fire hazards, which in many instances exceed the fire hazards associated with the burning of

products composed of more conventional and traditional materials such as wood, glass or cotton:

(a) Flame spread is more rapid, and the likelihood of the occurrence of "flashover" is increased. "Flashover" may be defined as that phenomenon which is manifested when a fire in one portion of a room or structure suddenly engulfs the entire room or structure so that most combustibles therein burn simultaneously and intensely.

(b) Extreme heat is more quickly generated than is the case with conventional cellulosic materials. Plastics products liberate significantly more BTU's per pound than conventional cellulosic materials such as wood or cotton. The rapid accumulation of heat in a room or structure can lead to an earlier "flashover" condition.

(c) Greater amounts of dense smoke are produced than accompany the burning of conventional cellulosic materials.

(d) Toxic or flammable gases or chemicals are released more quickly and there are more such gases released at various stages of the combustion process, than is the case with conventional cellulosic materials. Furthermore, in the absence of ignition or combustion, toxic or flammable gases or chemicals are released more quickly and there are more such gases released in the process of pyrolysis of plastics products (*i.e.*, chemical decomposition in the presence of sufficient heat) than is the case with conventional cellulosic materials.

(e) Polystyrene and its copolymers tend to melt or drip in the presence of fire, which can contribute materially to the spread of a blaze.

(f) Certain types of cellular polyurethane may self-ignite if improperly formulated or applied.

PAR. 19. Commencing in the mid 1960's and continuing particularly from 1967 through the present, the trade press has published accounts or articles concerning injury to persons and property as a result of fires in various structures in which plastics products were reportedly used in the construction or furnishing thereof. From time to time such reports, and similar statements of insurance, fire protection, or safety officials and other experts, have related or attributed the spread and intensity of such fires, often accompanied by dense or toxic smoke, to the presence of plastics products in the actual fire environment.

PAR. 20. The facts concerning the fire behavior characteristics of plastics products, as set forth in Paragraph Eighteen above, and the fact that in certain applications such products can present serious hazards to life and property, are material facts which, in many instances, have been and may be unknown to or not fully comprehended by specifiers, purchasers or users of such products. Among those who have been or may be ignorant or not fully cognizant of such material facts are many

architects, contractors, builders, wholesale and retail purchasers, and building code officials, in addition to owners, operators, users and occupants of homes, buildings and other structures.

PAR. 21. The manner and form of use by respondent companies and other members of the class of ASTM test standards and of the classifications, descriptive terminology and expressions specified therein in the marketing of plastic products, as alleged in Paragraphs Eleven through Thirteen hereof; the statements, representations, acts and practices of all respondents, separately or collectively, in using or in acquiescing in the manner and form of use of such tests, standards, descriptive terminology and expressions, which do not produce reliable or accurate data to determine, evaluate, predict or describe the burning characteristics of plastics products, as alleged in Paragraphs Fourteen through Sixteen hereof; and the fact that said plastics products, when used in the construction and furnishing of homes, buildings or other structures, and when present in the built environment, under actual fire conditions, can or may without the full knowledge or understanding of specifiers, users or purchasers thereof, present or increase the actual or potential risk of serious harm or damage from the hazards of fire to persons or property, as alleged in Paragraphs Eighteen through Twenty are all material facts which, from at least 1967 to the present were and are, or should have been, known to respondent associations and to the respondent companies and other members of the class, separately or collectively.

PAR. 22. Having separate or collective knowledge, whether actual or constructive, of the material facts as set forth in Paragraph Twenty-One hereof, it became the duty of all respondents, separately and collectively, to immediately formulate and implement adequate precautionary, remedial, and corrective action including, but not limited to, some or all of the following:

(a) To cease using, or permitting or acquiescing in the use of ASTM D-1692 and ASTM E-84, or any other small scale test standards, in the marketing of plastics products.

(b) To cease using, or permitting or acquiescing in the use of such descriptive terminology or expressions as: "non-burning," "self-extinguishing," "25 flame spread," or any other similar expressions, in the marketing of plastics products.

(c) To cease marketing, or permitting or acquiescing in the marketing of plastics products, without clearly warning specifiers, purchasers and users thereof concerning possible fire hazards, and adequately informing such persons concerning the requirements or conditions for their safe use.

(d) To undertake adequate and effective precautionary measures concerning existing stocks of plastics products or materials, whether in the hands of respondents or others; including but not necessarily limited to: Use of warning labels affixed thereto, and notices in contracts, in invoices, or set out in advertisements published and disseminated to the general public.

(e) To undertake appropriate measures to withdraw, rescind or nullify existing specification sheets and promotional materials containing references to the aforesaid ASTM standards and descriptive terminology, whether in the hands of respondents or others.

(f) To notify all previous purchasers, specifiers and users that said plastics products could constitute a serious fire hazard, and that neither the aforesaid ASTM test standards nor the aforesaid descriptive terminology, is accurate or reliable for determining, evaluating, predicting or describing the burning characteristics of such plastics products under actual fire conditions.

(g) To develop or to assist in developing suitable measures to correct or minimize existing fire hazards created or increased by the use of plastics products in existing homes, buildings, and other structures inhabited or used by members of the public.

PAR. 23. Respondents, whether separately or collectively, have failed in their aforesaid duty to formulate and implement adequate or effective precautionary, remedial or corrective action with respect to plastics products marketed as aforesaid. To the contrary, they continue to cooperate and act together in carrying out the acts and practices hereinabove set forth.

PAR. 24. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 25. The use by respondents, separately or collectively, whether directly, indirectly, or by permission or acquiescence, of the tests, standards, classifications and descriptive terminology, specifications sheets, promotional materials, statements, representations, acts and practices, their failure to disclose material facts and to undertake adequate and effective precautionary, remedial or corrective action, and their furnishing to others of the means and instrumentalities for deception as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive specifiers, purchasers and users of plastics products, and has induced the specification, purchase and use of substantial quantities of such products.

PAR. 26. The separate and collective acts and practices of respondents, their failure to discontinue false and deceptive representations, and their continued failure to disclose material facts and to undertake adequate and effective precautionary, remedial and corrective action to eliminate or minimize actual or potential risks of injury or damage to life and property, as herein alleged, were, are, and continue to be unconscionable acts or failures to act, and unfair and contrary to public policy, and were, are and continue to be all to the prejudice and injury of the public and of respondents' competitors, and constituted, and continue to constitute unfair methods of competition in commerce, and unfair or 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 the 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 complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having 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 sixty (60) 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, makes the following jurisdictional findings, and enters the following order:

*The Commission determined that this Decision and Order should not apply to the American Society for Testing and Materials or to Rohm & Haas Company.

1. Respondent the Society of the Plastics Industry, Inc. is a not-for-profit 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 250 Park Avenue in the city of New York, State of New York.

Respondent Allied Chemical Corporation 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 Columbia Road and Park Avenue, in the city of Morristown, State of New Jersey.

Respondent ARCO Polymers, Inc. (formerly known as Sinclair-Koppers Company) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Koppers Building, in the city of Pittsburgh, State of Pennsylvania.

Respondent BASF Wyandotte Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 100 Cherry Hill Road, in the City of Parsippany, State of New Jersey.

Respondent Baychem Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 425 Park Avenue, in the City of New York, State of New York.

Respondent Cook Paint and Varnish Company 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 1412 Knox Street, in the city of North Kansas City, State of Missouri.

Respondent the Dow Chemical Company 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 Bennett Building, 2030 Dow Center, in the city of Midland, State of Michigan.

Respondent E. I. Du Pont de Nemours & Co., 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 1007 Market Street, in the city of Wilmington, State of Delaware.

Respondent the Flintkote Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 400 Westchester Avenue, in the city of White Plains, State of New York.

Respondent Foster Grant Co., 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 289 North Main Street, in the city of Leominster, State of Massachusetts.

Respondent the General Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1 General Street, in the city of Akron, State of Ohio.

Respondent W. R. Grace & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1114 Avenue of the Americas, in the city of New York, State of New York.

Respondent Hooker Chemicals & Plastics Corp. 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 1515 Summer Street, in the city of Stamford, State of Connecticut.

Respondent Jefferson Chemical Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3336 Richmond Avenue, in the city of Houston, State of Texas.

Respondent Millmaster Onyx Corporation 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 99 Park Avenue, in the city of New York, State of New York.

Respondent Mine Safety Appliances Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 400 Penn Center Boulevard, in the city of Pittsburgh, State of Pennsylvania.

Respondent Monsanto Company 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 800 North Lindbergh Boulevard, in St. Louis County, State of Missouri.

Respondent Olin Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 120 Long Ridge Road, in the city of Stamford, State of Connecticut.

Respondent Owens-Corning Fiberglas Corporation, is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Delaware, with its office and principal place of business located at Fiberglas Tower, in the city of Toledo, State of Ohio.

Respondent PPG Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at One Gateway Center, in the city of Pittsburgh, State of Pennsylvania.

Respondent Tenneco Chemicals, 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 Park 80 Plaza W-1, in the city of Saddle Brook, State of New Jersey.

Respondent Union Carbide Corporation 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 270 Park Avenue, in the city of New York, State of New York.

Respondent Uniroyal, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Oxford Management and Research Center, in the city of Middlebury, State of Connecticut.

Respondent United States Steel Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 600 Grant Street, in the city of Pittsburgh, State of Pennsylvania.

Respondent The Upjohn Company 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 7000 Portage Road, in the city of Kalamazoo, State of Michigan.

Respondent Witco Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 277 Park Avenue, in the city of New York, State of New York.

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

ORDER

I

It is ordered, That Allied Chemical Corporation, ARCO Polymers, Inc., BASF Wyandotte Corporation, Baychem Corporation, Cook Paint and Varnish Company, the Dow Chemical Company, E. I. Du Pont De Nemours & Company, the Flintkote Company, Inc., Foster Grant Co., Inc., the General Tire & Rubber Company, W. R. Grace & Company,

Hooker Chemicals & Plastics Corp., Jefferson Chemical Company, Inc., Millmaster Onyx Corporation, Mine Safety Appliances Company, Monsanto Company, Olin Corporation, Owens-Corning Fiberglas Corporation, PPG Industries, Inc., Tenneco Chemicals, Inc., Union Carbide Corporation, United States Steel Corporation, Uniroyal, Inc., the Upjohn Company, and Witco Chemical Corporation (hereinafter referred to as "Respondents"), and respondents' successors, assigns, officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the advertising, offering for sale, selling or distributing in commerce within the United States, of Products as defined in Appendix A hereof, do forthwith:

(A) Cease and desist from using, publishing or disseminating, or encouraging others to use, publish or disseminate, directly or indirectly, orally or in writing, whether or not in conjunction with or with reference to any test or standards, such descriptive terminology or expressions as: "non-burning," "self-extinguishing," "non-combustible," or any other term, expression, product designation or trade name of substantially the same meaning except that such terminology or expressions may be used with respect to any Product hereafter developed which, is, in fact, non-combustible, non-burning, or self-extinguishing as the case may be, under actual fire conditions, and except that reference may be made to numerical flame spread ratings where (in the case of written reference) the following statement is included as prominently as, and in close conjunction to, such reference:

This numerical flame spread rating is not intended to reflect hazards presented by this or any other material under actual fire conditions

or where (in the event of oral reference) a disclosure that the numerical flame spread rating is not intended to reflect hazards under actual fire conditions is made in conjunction with such oral reference. Reference to tests or standards in which such terminology appears shall not in itself be considered as prohibited by this paragraph.

(B) Individually establish and implement a program to identify previous purchasers from respondent of products, other than precursors from which such products are not directly foamed, since Jan. 1, 1968, and in conjunction with or through the Society of the Plastics Industry, Inc. (hereinafter referred to as "SPI") to supply each purchaser so identified with a notice in the form of Appendix B hereof within 120 days from the date this order becomes final.

(C) In conjunction with or through SPI, cause to be published in

each of the publications identified in Appendix C hereof a notice not less than one quarter of a page in size in the form of Appendix B or Appendix B-1 as shall be specified in Appendix C hereof.

(D) In conjunction with or through SPI, establish and implement a program to identify officials, governmental bodies and insurance underwriters and publishers of major building materials compendia concerned with fire safety codes and building codes embodying the tests or standards or terminology referred to in Appendix B and Paragraph (A) hereof, and to supply persons so identified within 120 days from the date this order becomes final with a notice in the form of Appendix B hereof.

(E) In conjunction with or through SPI, mail each member of the American Society for Testing and Materials a notice in the form of Appendix B hereof within sixty (60) days from the date this order becomes final.

(F) Collectively establish, implement and maintain a Research Program with the objectives of (a) determining the most effective manner for employing products and systems containing products to minimize hazards associated with fire in end-uses of products or such systems, (b) developing guidelines for the safe and effective use of products, and (c) developing tests or standards, including large-scale tests as well as methods by which the results of small scale tests can be correlated to provide an index of the behavior of products in various burning conditions, which will permit, to the extent feasible, accurate and reliable determination, evaluation, prediction, or description of the burning characteristics of products under actual fire conditions.

The Research Program shall be coordinated and managed by a Products Research Committee composed of nine persons of proved technical competence who are acceptable to the Federal Trade Commission and to respondents, four of whom shall at all times be representatives of the industry and none of the remainder of whom shall be representatives of a competing industry. Any vacancy on the committee shall be filled by the affirmative vote of not less than two-thirds of the remaining members of the committee; *Provided, however,* That any such vacancy occurring among the industry representatives shall be filled from a list of three nominees submitted by the Executive Committee of SPI. The Federal Trade Commission shall designate a chairman of the committee from among the members of the committee, who shall prepare agenda, preside at meetings, and sign vouchers and checks but who shall have no other responsibilities or authority greater than any other member of the committee. The committee shall keep complete and accurate

minutes of meetings, and records of all contracts, reports, test results and supporting data, and shall make such materials available to the Federal Trade Commission and to respondents on reasonable notice. The committee may implement the program by direct grants, contracts or such other means as it deems appropriate, and shall submit an annual report of program activities to the Federal Trade Commission and to respondents. All committee action, other than the filling of vacancies on the committee, shall be effected by a majority vote of the membership.

The Research Program shall have available \$5 million, not to exceed \$1.5 million in any year, in cash funds or, to the extent desired by the Products Research Committee, in manpower support or other value in kind (hereinafter all referred to as Program Funds) to be expended over a period of five years beginning on the date this order becomes final. There shall be a credit against the provision of program funds in an amount, not to exceed \$2.5 million equal to the value expended by or through SPI to support programs, including current programs, designed to accomplish an objective of the Research Program, *Provided*, That such credit shall not be allowed as to any program after a determination by the Products Research Committee that the program is not designed to accomplish, or is not accomplishing an objective of the Research Program. The Products Research Committee shall be supplied with the research contract, project proposal, and a detailed project description of each program as to which value expended by or through SPI is proposed as a credit against the provision of program funds, sufficient to show that each such program is in fact designed to accomplish an objective of the Research Program, and respondents in conjunction with or through SPI shall cause to be maintained and made available to the committee upon request, complete records concerning the operations and results of such programs. The committee shall annually review all continuing programs, including those for which credit has been extended, to determine their continued conformance with objectives of the Research Program. The balance of program funds shall be supplied by respondents, as required to meet program commitments, *Provided*, That respondents' obligation shall be *pro tanto* reduced by any supply of program funds by others, and shall be available for disbursement for the Research Program in such manner and for such programs as the Products Research Committee may direct. Respondents shall also provide such reasonable administrative support for the committee as is required for its operations, including meeting facilities, secretarial assistance, office supplies and

accounting and disbursements assistance, the cost of which shall not exceed \$25,000 per year. Nothing contained herein shall prevent the Products Research Committee from taking appropriate actions, including but not limited to the formation of a trust or non-profit corporation, for the carrying out of the objectives of this paragraph.

Program funds shall be made available based on a formula mutually agreed upon among respondents. Each respondent shall be, severally, obligated to provide only those funds specifically charged to it pursuant to said formula.

(G) Individually take all necessary and appropriate actions to inform present and future employees having managerial, sales, marketing, or research responsibility regarding products, other than precursors from which such products are not directly foamed, of the provisions of Paragraph (A) and Appendix B of this order and to enforce compliance therewith by such employees by:

- 1) furnishing each such present employee within thirty (30) days from the effective date of the order, and each such future employee within thirty (30) days of his assignment to managerial, sales, marketing, or research responsibility regarding products, with a copy of Paragraph (A) and Appendix B together with a written notice, over the signature of the respondent's chief executive officer, which promulgates the policy required in Paragraph (A); and which notifies each such person that the respondent will take appropriate disciplinary action, which shall, in the event of willful or repeated violations, consist of fine, suspension or dismissal, against any persons who engage in acts or practices prohibited by Paragraph (A);
- 2) requiring appropriate periodic written assurance from each such person that his business practices conform with the requirements of Paragraph (A).

(H) Individually submit to the Commission a report within sixty (60) days and one hundred twenty (120) days after the effective date of this order, setting forth the specific steps which the respondent has taken and intends to take during the period ending on the next anniversary of the effective date to implement the provisions of this order, and thereafter to file such a report annually beginning on the anniversary of the effective date, for a period of five (5) years, as well as such other reports relating to the subject matter of this order as the Commission may thereafter direct.

(I) Individually 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

engaged in the manufacture or distribution of products in the United States, or any other change in the corporation which may affect compliance obligations arising out of the order.

II

It is further ordered, That the Society of the Plastics Industry, Inc. (hereinafter referred to as "Respondent" or "SPI") and respondent's successors, assigns, officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion or in commerce within the United States, of products as defined in Appendix A hereof, do forthwith:

(A) Cease and desist from using, publishing or disseminating, or encouraging others to use, publish or disseminate, directly or indirectly, orally or in writing, whether or not in conjunction with or with reference to any test or standards, such descriptive terminology or expressions as: "non-burning," "self-extinguishing," "non-combustible," or any other term, expression, product designation or trade name of substantially the same meaning except that such terminology or expressions may be used with respect to any product hereafter developed which is, in fact, non-combustible, non-burning, or self-extinguishing as the case may be, under actual fire conditions, and except that reference may be made to numerical flame spread ratings where (in the case of written reference) the following statement is included as prominently as, and in close conjunction to, such reference:

This numerical flame spread rating is not intended to reflect hazards presented by this or any other material under actual fire conditions

or where (in the event of oral reference) a disclosure that the numerical flame spread rating is not intended to reflect hazards under actual fire conditions is made in conjunction with such oral reference. Reference to tests or standards in which such terminology appears shall not in itself be considered as prohibited by this paragraph.

(B) In conjunction with or on behalf of Allied Chemical Corporation, ARCO Polymers, BASF Wyandotte Corporation, Baychem Corporation, Cook Paint and Varnish Company, the Dow Chemical Company, E. I. du Pont De Nemours & Company, the Flintkote Company, Foster Grant Co., Inc., W. R. Grace & Company, Hooker Chemicals & Plastics Corp., Jefferson Chemical Company, Inc., Millmaster Onyx Corporation, Mine Safety Appliance Company, Monsanto Company, Olin Corporation, Owens-Corning Fiberglas Corporation, PPG Industries, Inc., Tenneco Chemicals, Inc., Union Carbide Corporation, United States

Steel Corporation, Uniroyal, Inc., the Upjohn Company, and Witco Chemical Corporation (hereinafter referred to as "other Respondents") supply each purchaser identified by other respondents pursuant to their consent order with the Federal Trade Commission in File No. 732 3040, with a notice in the form of Appendix B hereof within 120 days from the date this order becomes final.

(C) In conjunction with or on behalf of other respondents, cause to be published in each of the publications identified in Appendix C hereof a notice not less than one quarter of a page in size in the form of Appendix B or Appendix B-1 as shall be specified in Appendix C hereof.

(D) In conjunction with or on behalf of other respondents, establish and implement a program to identify officials, governmental bodies and insurance underwriters and publishers of major building materials compendia concerned with fire safety codes and building codes embodying the tests or standards or terminology referred to in Appendix B and Paragraph (A) hereof, and to supply persons so identified within 120 days from the date this order becomes final with a notice in the form of Appendix B hereof.

(E) In conjunction with or on behalf of other respondents, mail each member of the American Society for Testing and Materials a notice in the form of Appendix B hereof within sixty (60) days from the date this order becomes final.

(F) Take all steps necessary and appropriate to implement and maintain the Research Program established by other respondents pursuant to Paragraph (F) of their consent order with the Federal Trade Commission in File No. 732 3040 including (1) the submission by the Executive Committee of SPI to the Products Research Committee a list of three nominees of persons of proved technical competence to fill any vacancies occurring among the industry representatives to the Products Research Committee; (2) the submission of the research contract, research proposal, and a detailed project description of each program as to which the value expended by or through SPI is proposed as a credit against the provision of program funds sufficient to show that each such program is, in fact, designed to accomplish the objectives of (a) determining the most effective manner for employing products and systems containing products to minimize hazards associated with fire in end-uses of products or such systems, (b) developing guidelines for the safe and effective use of products and (c) developing tests or standards, including large-scale tests as well as methods by which the results of small scale tests can be correlated to provide an index of the behavior of products in various burning conditions, which will permit, to the extent feasible, accurate and reliable determination, evaluation, prediction, or description of the burning characteristics of products under actual fire condi-

tions; and (3) the maintenance of complete records concerning the operations and results of programs for which such a credit is given which shall be available to the Products Research Committee upon request.

(G) Take all necessary and appropriate actions to inform present and future employees having administrative, managerial, promotional or technical responsibility regarding products, of the provisions of Paragraph (A) and Appendix B of this order and to enforce compliance therewith by such employees by:

- 1) furnishing each such present employee within thirty (30) days from the effective date of the order, and each such future employee within thirty (30) days of his assignment to administrative, managerial, promotional, or technical responsibility regarding products, with a copy of Paragraph (A) and Appendix B together with a written notice, over the signature of respondent's chief executive officer, which promulgates the policy required in Paragraph (A); and which notifies each such person that the respondent will take appropriate disciplinary action, which shall, in the event of willful or repeated violations, consist of fine, suspension or dismissal, against any persons who engage in acts or practices prohibited by Paragraph (A);

- 2) requiring appropriate periodic written assurance from each such person that his business practices conform with the requirements of Paragraph (A).

(H) Submit to the Commission a report within sixty (60) days and one hundred twenty (120) days after the effective date of this order, setting forth the specific steps which the respondent has taken and intends to take during the period ending on the next anniversary of the effective date to implement the provisions of this order, and thereafter to file such a report annually beginning on the anniversary of the effective date, for a period of five (5) years, as well as such other reports relating to the subject matter of this order as the Commission may thereafter direct.

(I) 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 engaged in the manufacture or distribution of products in the United States, or any other change in the corporation which may affect compliance obligations arising out of the order.

APPENDIX A

For purposes of this Order, Products shall mean cellular or foamed plastic material (as

hereinafter defined) which is used in the construction of homes, buildings and similar structures, or Furniture (as hereinafter defined) in such structures, but not including flooring or flooring underlay or interior or exterior trim (as hereinafter defined), or carpet underlay or synthetic grass underlay.

As used herein, the term cellular or foamed plastic material shall mean (a) in the case of material used in the construction of homes, buildings and similar structures, a heterogeneous system comprised of at least two phases, one of which is a continuous polymeric organic material, and a second of which is deliberately introduced for the purpose of distributing a gas in voids throughout the material, thus achieving a reduction in mass density to less than 95% of the density of the unfoamed polymeric organic material, and in the case of material used in Furniture such a heterogeneous system with a density less than 20 pounds per cubic foot, and (b) both foamed and unfoamed polymeric or monomeric precursors (pre-polymer, if used) unless sold for use in other materials, but not including plasticizers, fillers and extenders, catalysts, blowing agents, colorants, stabilizers, lubricants, surfactants, pigments, reaction control agents, processing aids, and flame retardants.

As used herein, the term Furniture shall mean articles used to equip the interior of a structure, which are moveable, but shall exclude articles which are regulated or become regulated with respect to fire hazards under federal statutes or regulations.

As used herein, interior trim shall mean Products with a density of 20 pounds per cubic foot or greater used around openings or on walls or ceilings, including casings, baseboards, chair-rails, and moldings applied for decoration which do not exceed ten percent of the aggregate wall and ceiling areas of any room or space; exterior trim shall mean Products with a density of 20 pounds per cubic foot or greater used around openings, and on exterior walls and roofs, including casings, moldings and shutters, which do not exceed ten percent of the aggregate space on any wall or roof; and flooring and flooring underlay shall mean Products with a density of 20 pounds per cubic foot or greater used in flooring or flooring underlay.

APPENDIX B

Important Notice Regarding The Flammability of Cellular Plastics Used in Building Construction, and Low Density Cellular Plastics Used in Furniture

The flammability characteristics of cellular plastics used in building construction, and low density cellular plastics used in furniture are tested under numerous test methods and standards. Included among these are ASTM D-568, 635, 757, 1433, 1692, E-84, 162 and 286; UL 94 and 723; and NFPA 255. The Federal Trade Commission considers that these standards are not accurate indicators of the performance of the tested materials under actual fire conditions, and that they are only valid as a measurement of the performance of such materials under specific, controlled test conditions. The terminology associated with the above tests or standards, such as "non-burning", "self-extinguishing", "non-combustible" or "25 (or any other) flame spread" is not intended to reflect hazards presented by such products under actual fire conditions. Moreover, some hazards associated with numerical flame spread ratings for such products derived from test methods and standards may be significantly greater than those which would be expected of other products with the same numerical rating.

The Commission considers that under actual fire conditions, such products, if allowed to remain exposed or unprotected, will under some circumstances produce rapid flame spread, quick flashover, toxic or flammable gases, dense smoke and intense and immediate heat and may present a serious fire hazard. The manufacturer of the particular product or The Society of the Plastics Industry, Inc., should be consulted for instructions for use to minimize the risks that may be involved in the use of these products.

THE SOCIETY OF THE PLASTICS INDUSTRY, INC., et al.

Decision and Order

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The Federal Trade Commission, Washington, D. C. 20580 requests that any representation that is inconsistent with the terms of this Notice be brought to its attention. This Notice is distributed by The Society of the Plastics Industry, Inc., 250 Park Avenue, New York, New York 10017.

APPENDIX B-1

(To Be Used In Lieu of Appendix B As Regards Consumer Journals)

Important Notice Concerning Certain Cellular Plastics Products
The Federal Trade Commission believes that certain cellular plastic products may present serious hazards in case of fire. If improperly used or allowed to remain exposed or unprotected, these products may burn rapidly in a fire and produce dense smoke and toxic gas. Some of these products are polyurethane foam, polystyrene foam, polyvinyl chloride foam, ABS foam, cellulose acetate foam, epoxy foam, phenolic foam, polyethylene foam, polypropylene foam, urea foam, ionomer foam, silicone foam, and foamed latex. These products are sometimes used in building construction, particularly as insulation, and flexible foamed plastics of this type are sometimes used in furniture.

The Federal Trade Commission believes that terms such as "non-burning", "self-extinguishing" or "non-combustible" do not accurately reflect the hazards that may be presented by such products since in fires such products are not self-extinguishing and will burn rapidly if not properly protected.

You may have purchased these products from a building supply store or from a contractor or applicator, or they may have been installed in the original construction of your home. If you are uncertain how to minimize risks that may result from the improper use of these products you should consult The Society of the Plastics Industry, Inc., or the manufacturer.

This Notice is distributed by The Society of the Plastics Industry, Inc., 250 Park Avenue, New York, New York.

APPENDIX C

The notice set forth in Appendix B shall be published once in each of the following journals. The schedule for such publication shall be made in the first journal within each given category not more than ninety (90) days from the effective date of this Order, in the second journal within the given category the following month and in each subsequent journal during each successive month until such time as the notice has been carried once in each journal.

Architecture Journals

Journals
Architectural Digest
Progressive Architecture
Architectural Record

Building and Construction Journals

Building Products Guide
Engineering News Record
Professional Builder
House & Home
NAHB Journal of Homebuilding

Fire Protection Journals

Fire Command
Fire Chief Magazine
Fire Engineering

Furnishings Journals

Home Furnishings Daily

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Complaint

Journals

Heating Plumbing & Air Conditioning Journals
D E Journal
ASHRAE Journal

Insurance Journals

Best's Review
National Underwriter

Interior Decoration

Family Handyman
Interiors

Plastics Journals

Modern Plastics
Plastic World
Plastics Design & Processing
Plastics Technology

The notice set forth in Appendix B-1 shall be published in each of the following journals not more than ninety (90) days from the effective date of this Order:

Consumer Journals:

Better Homes & Gardens
House and Garden
Time
Popular Mechanics

Farm Journals:

Farm Journal
American Farmer

IN THE MATTER OF

JAYMOR BUILDERS, INC., ET AL.

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

Docket C-2597. Complaint, Nov. 11, 1974—Decision, Nov. 11, 1974

Consent order requiring a Union, N. J., home improvement firm, among other things to cease making false statements concerning its guarantees and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Phyllis L. Kaye.*
For the respondents: *Paul Seligman, West Caldwell, N. J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jaymor Builders, Inc., a corporation, and Morton Brett, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jaymor Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1400 Stuyvesant Avenue, Union, N. J.

Respondent Morton Brett is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale, distribution and installation of home improvement products, including residential siding to the public.

COUNT I

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents regularly extend or arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are defined in Sections 226.2 (k) and 226.2(f), respectively, of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course and conduct of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Section 226.2 (n) of Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of merchandise and services. On these contracts,

hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents do not provide any other consumer credit information.

PAR. 5. By and through the use of the contract referred to in PARAGRAPH FOUR, respondents sell home improvements which become part of the customers' real property under applicable state law. As a result of these credit sales and respondents' arrangements for the extension of credit, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is or is expected to be used as the principal residence of respondents' customers. The retention or acquisition of such security interest in said real property thereby entitles customers to be given the right to rescind the transaction until midnight of the third business day following the consummation of the transaction. Having consummated such rescindable credit transactions, respondents, in some instances, have:

1. Failed to notify the buyer of said buyer's right to rescind the contract, as provided for by Section 226.9 of Regulation Z.

2. Failed to provide each buyer who has the right to rescind with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that Section.

3. Failed to honor a customer's right to rescind the contract when such election is made and notice of rescission is properly given as prescribed by Section 226.9(a) of Regulation Z, and hence failed to give full effect to the customer's rescission, in violation of Section 226.9(d) of Regulation Z.

4. Performed work or services for or taken other actions with regard to customers who have a right of rescission under Section 226.9(a) of Regulation Z, prior to the expiration of the three day rescission period, in violation of Section 226.9(c) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes a violation of that Act, and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

COUNT II

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

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have purchased, and are purchasing building supplies and

materials, including residential siding, from suppliers and manufacturers in various other states of the United States and respondents distribute the guarantees of said manufacturers to their customers. Respondents have also caused and now cause advertisements which are designed and intended to induce customers to purchase merchandise and services to appear in newspapers of interstate circulation, including, but not limited to the Star-Ledger, the Newark News, and the New York Daily News. Accordingly, respondents maintain, and at all times mentioned herein have maintained, a substantial course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business and for the purpose of inducing the purchase of merchandise and services, respondents and their agents have made certain statements and representations with respect thereto in advertisements appearing in newspapers of interstate circulation.

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

30-Year guarantee transferable.

Guaranteed for 30 years against cracking, chipping, crazing or erosion, blistering, flaking or peeling.

10-year guarantee.

15-year guarantee.

25-year guarantee.

Guarantee, We will replace any faulty material including labor for the life of your guarantee.

PAR. 9. By and through the use of the aforementioned statements and representations, and others of similar import and meaning but not specifically set out herein, respondents represent, directly or by implication, that:

Respondents' siding materials and installations are guaranteed for various periods of time, thereby representing that said products are unconditionally guaranteed in every respect for the stated periods of time.

PAR. 10. In truth and in fact: Respondents' siding materials and installations are not unconditionally guaranteed in every respect without condition or limitation for the stated periods of time. Such guarantee as may be provided is subject to pro-rata provisions, terms, conditions and limitations.

Therefore, the statements and representations as set forth in Para-

graphs Eight and Nine hereof were and are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of home improvement products, including residential siding of the same general kind and nature as sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of merchandise and services sold by respondents by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents were and are 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 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 Truth in Lending Act and the regulation promulgated thereunder; and

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

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

violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Jaymor Builders, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1400 Stuyvesant Avenue, Union, N. J.

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

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

ORDER

PART I

It is ordered, That respondents Jaymor Builders, Inc., a corporation, its successors and assigns and its officers, and Morton Brett, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of or arrangement for consumer credit, or any advertisement to aid, promote or assist, directly or indirectly any extension of or arrangement for 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 notify the buyer of said buyer's right to rescind the contract, as provided for by Section 226.9 of Regulation Z.
2. Failing to provide each buyer who has the right to rescind with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that Section.
3. Failing to honor a customer's right to rescind the contract when such election is made and notice of rescission is properly given as prescribed by Section 226.9(a) of Regulation Z, and in such a case, failing to give full effect to the customer's rescission, as required by Section 226.9(d) of Regulation Z.

4. Performing work or services or undertaking any of the actions proscribed by Section 226.9(c) of Regulation Z for customers who have a right of rescission under Section 226.9(a) of Regulation Z prior to the expiration of the three day rescission period.

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

6. Failing, in any transaction in which respondents retain or acquire a security interest in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

PART II

It is further ordered, That respondents Jaymor Builders, Inc., a corporation, its successors and assigns and its officers, and Morton Brett, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale, distribution or installation of any merchandise or services, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, orally, visually or in writing, directly or by implication, that any product or service is 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; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally, visually or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

PART III

It is further ordered, That respondents distribute a copy of this order to all operating divisions of the corporate respondent and also distribute a copy of this order to all personnel, agents or representatives of respondents responsible for the sale or offering for sale of merchandise

or services, or concerned with the consummation of any extension of consumer credit, or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

M & W ELECTRONICS, INC., ET AL.

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

Docket C-2598. Complaint, Nov. 11, 1974—Decision, Nov. 11, 1974

Consent order requiring a Dallas, Tex., retailer and repairer of hearing aids, audiometers and other hearing accessories, among other things to cease misrepresenting the usual and customary retail price of its merchandise.

Appearances

For the Commission: *Joseph L. Hickman.*

For the respondents: *Pro se.*

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 M & W Electronics, Inc., and Dallas Hearing Aid Center, corporations, and John H. Wilson, Jr., individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents M & W Electronics, Inc., and Dallas Hearing Aid Center, are corporations organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 330 South Zang Boulevard, Dallas, Texas.

Respondent John H. Wilson, Jr., 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 the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business of selling and repairing of hearing aids, audiometers and other hearing accessories.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said products by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to newspapers for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, and have disseminated and caused the dissemination of advertisements concerning said products by various means, including but not limited to newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, is the following:

HEARING AID by nationally known manufacturer IN-THE-EAR-MODEL
Orig. Price \$319.50 CLOSE-OUT SPECIAL \$99.50
Limited Quantity Available

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

The higher stated price set out in said advertisements in connection with the words "orig. price" was the price at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent, regular course of business and that the difference between the higher and lower price represented savings to purchasers from respondents' usual and customary retail price.

PAR. 6. In truth and in fact, the higher stated price set out in said advertisement in connection with the words "orig. cost" was in excess of the price at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent, regular course of business and the difference between the higher and lower prices did not represent savings to purchasers from respondents' customary retail price.

PAR. 7. The acts and practices of the respondents as set forth above were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitutes, unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Dallas 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents M & W Electronics, Inc., and Dallas Hearing Aid Centers are corporations organized, existing and doing business under and by virtue of the laws of the State of Texas with their office and principal place of business located at 330 South Zang Boulevard, city of Dallas, State of Texas.

Respondent John H. Wilson, Jr., is an officer of said corporations. He formulates, directs, and controls the policies, acts and practices of said corporations, and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents M & W Electronics, Inc., and Dallas Hearing Aid Center, corporations, its subsidiaries, successors, assigns, its officers, and John H. Wilson, Jr., individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the distribution, advertising, offering for sale, sale or repair of hearing aids or other related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Using the words "orig. price" or any other words of similar import or meaning, to refer to any amount which is in excess of the price at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business; or otherwise misrepresenting the respondents usual and customary retail price of such merchandise.

2. Failing to maintain and produce for inspection or copying for a period of two (2) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar

representations, as set forth in Paragraph One of this order is based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

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.

IN THE MATTER OF

THE BENDIX CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7
OF CLAYTON ACT

Docket 8739. Complaint, June 29, 1967—Decision, Nov. 12, 1974*

Consent order requiring, among other things the establishment of a "New Company" within six months of the effective date of this order and its spin off to shareholders or the public within two years. When it commences business, the New Company will own Fram Corporation's private label filter division, three of Bendix's and two of Fram's manufacturing divisions and a portion of Bendix's automotive sales divisions. Further, respondent is prohibited from making any acquisitions for a ten-year period, within the fields of automotive filters for aftermarket distribution, areospace filters, liquid separators, and automobile parts for aftermarket distribution.

*Complaint, initial decision and original order reported in 77 F.T.C. 731.

Decision and Order

84 F.T.C.

Appearances

For the Commission: *Andrew G. Stone* and *Allee A. Ramadhan*.
For the respondents: *Abe Krash, Arnold & Porter, Wash., D.C.*

DECISION AND ORDER

The Federal Trade Commission having initiated a complaint charging that the Respondents named in the caption hereof have violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The Commission, by Order and Decision issued June 18, 1970, having found that the respondents named in the caption hereof have violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, said order having been vacated by the United States Court of Appeals for the Sixth Circuit, and the matter having been remanded for further hearings;* and

Respondents and complaint counsel, by joint application filed Apr. 17, 1974, having moved to have the matter removed from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued May 9, 1974, having withdrawn this matter from adjudication pursuant to Section 2.34(d) of its rules; and

The executed agreement containing the following consent order; and admission by respondents of all the jurisdictional facts set forth in the complaint which the Commission issued; a statement that the Commission has relied in a material way upon certain representations by respondents as to net assets, income, and pretax profits of the lines of business to be spun off, certain unaudited pro forma financial statements, and certain statements with respect to the Net Parent Investment of the New Company; 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 or otherwise; and waivers and 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Paragraph 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 makes the following jurisdictional findings and enters the following order:

*Reported in 450 F.2d 534, 9 S. & D. 138.

1. Respondent the Bendix Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at Southfield, Mich.
2. Respondent Fram Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located in Providence, R. I.
3. The Federal Trade Commission has jurisdiction of the proceeding and of the Respondents and this proceeding is in the public interest.

ORDER

I

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

1. *Respondent*: The Bendix Corporation, and those persons, partnerships, corporations or other legal entities acting on its behalf, including, but not limited to, its officers, directors, agents, representatives, employees, majority-owned subsidiaries, successors and assigns; *Provided, however*, That the term Respondent shall not be construed to include the New Company (as hereinafter referred to).
2. *Automobile Parts*: All parts used on and in connection with the operation of passenger cars and light trucks. (As used in this order the term "light trucks" means trucks having a gross vehicle weight of less than 10,000 pounds.)
3. *Bendix Ignition Parts*: Automobile parts consisting of rotors, condensers, points and distributor caps, as presently manufactured by Bendix; as well as all other parts as may from time to time be manufactured by Bendix which are substitutes therefor, or improvements thereof.
4. *Automobile Chemicals*: Automobile parts cleaners, hand cleaners, starting fluid and any other automobile chemical products sold by Bendix as of the effective date of this order except for brake fluid and brake lubricant.
5. *Effective Date of this Order*: The date of issuance of the Commission's Decision and Order with respect to this matter.
6. *Spin-Off Date*: The date within two (2) years after the effective date of this order when respondent divests itself of all right, title and interest in, and all capital stock of, the New Company as provided in this order.
7. *Net Parent Investment*: The net book value of the assets of the New Company less the book value of the liabilities of the New Company determined in a manner consistent with the footnotes to the New Company balance sheet and income statement (pro forma combined-unaudited) attached as Exhibit IV to this order.

8. *Intra-New Company Eliminations*: Elimination of the sales between those divisions, subsidiaries and product lines to be transferred to the New Company pursuant to Part II(B) hereof.

II

It is ordered, That:

(A) Within six (6) months from the effective date of this order, respondent shall have existing or cause to be formed a separate corporation (herein "New Company") with at least sufficient shares of authorized capital stock to comply with the provisions of this order.

(B) Within six (6) months from the effective date of this order, respondent shall transfer to New Company:

(1) All of the assets, properties, businesses, goodwill, rights, privileges and interests of whatever nature, real, personal, tangible and intangible, (subject to liabilities) comprising the following existing divisions and/or subsidiaries of the Bendix Corporation (hereinafter "Bendix") and Fram Corporation (hereinafter "Fram"):

(a) Bendix Motor Components Division, whose principal plant and offices are located at 18th Street at Oakwood, Elmira, New York; *Provided, That*, Bendix shall not transfer the facilities and personnel of said division which are directly involved in or related to the manufacture or sale of bicycle brakes; said assets not to be transferred are listed in Exhibit I to this order, which is attached and made a part hereof. The portion of said division to be transferred had, on an unaudited pro forma basis, fiscal 1973 sales (before Intra-New Company Eliminations) of \$19,531,000, pretax profits of \$1,898,000 and, as of September 30, 1973, net assets of \$8,175,000;

(b) Bendix's Filter Division, whose principal plant and offices are located at 434 West 12 Mile Road, Madison Heights, Michigan, and which, on an unaudited pro forma basis, had fiscal 1973 sales (before Intra-New Company Eliminations) of \$5,346,000, pretax net profits of \$320,000, and, as of September 30, 1973, net assets of \$3,100,000;

(c) Bendix's Fuel Devices Division, whose principal plant and offices are located at 696 Hart Avenue, Detroit, Michigan, and which, on an unaudited pro forma basis, had fiscal 1973 sales (before Intra-New Company Elimina-

tions) of \$9,351,000, pretax net profits of \$1,117,000, and, as of September 30, 1973, net assets of \$4,264,000;

(d) Fram's Campbell Filter Company, whose principal plant and offices are located at Fram Road, Dexter, Missouri, and which, on an unaudited pro forma basis, had fiscal 1973 sales (before Intra-New Company Eliminations) of \$8,227,000, pretax net profits of \$1,755,000, and, as of September 30, 1973, net assets of \$3,472,000;

(e) Fram's Industrial Filter Division, whose principal plant and offices are located at 2929 East Apache, Tulsa, Oklahoma, and which, on an unaudited pro forma basis, had fiscal 1973 sales (before Intra-New Company Eliminations) of \$8,056,000, pretax net profits of \$335,000, and, as of September 30, 1973, net assets of \$3,074,000;

(f) Fram's General Products Division, whose principal plant and offices are located at U.S. #1 By Pass South, Henderson, North Carolina, and which, on an unaudited pro forma basis, had fiscal 1973 sales (before Intra-New Company Eliminations) of \$15,099,000, pretax net profits of \$260,000, and, as of September 30, 1973, net assets of \$11,420,000.

A list of the general product lines to be transferred pursuant to this Subparagraph (1) is attached to and made a part of the order as Exhibit II.

(2) All of the assets and businesses (subject to liabilities) of Bendix's Automotive Aftermarket Operations Division (hereinafter "AAO"), which, on an unaudited pro forma basis, had fiscal 1973 sales (before Intra-New Company Eliminations) of \$15,942,000, pretax net profits of \$1,650,000, and, as of September 30, 1973, net assets of \$5,838,000, consisting generally of all AAO's equipment, furniture and fixtures which relate to the product lines of AAO being divested as set forth in Exhibit III hereof, including a leasehold of a suitable warehouse facility, with adequate office space, of not less than 50,000 square feet; all AAO's books, catalogs, promotional materials, supplier and customer lists, records, accounts, data processing programs, inventories, machinery, and, subject to the provisions of Subparagraph (C) of Part II of this order, all rights to names, trade names, trademarks, service names and service marks owned by respondent (including all rights to P&D marks and names limited to the United States), pertaining to said AAO product lines; all AAO contracts (i) with third persons to manufacture,

remanufacture or supply said product lines or components thereof to AAO, and (ii) with third persons to purchase any such product lines from AAO, to the extent that such contracts cover said product lines; *Provided, however,* That Bendix shall not be required to divest any of its assets or businesses which relate to its brake, brake parts, brake fluid, brake lubricant, power steering, power hydraulics, or universal joint product lines.

(C) The assets to be transferred pursuant to Subparagraph (1) of Part II (B) above shall include, without limitation, all books, catalogs, promotional materials, supplier and customer lists, records, accounts, data processing programs, inventories, tools, dies, jigs, machinery, equipment, manufacturing facilities, research and development capabilities, real and personal property, contract rights (including, but not limited to, all supply and sales contracts and all employment contracts), all rights to names, trade names, trademarks, service names and service marks owned by respondent (including all rights to P&D marks and names limited to the United States), relating to, or associated with, the businesses to be transferred pursuant to Part II (B)(1)(a) through (f); *Provided, That,* respondent shall not be required to transfer or otherwise divest the names, trade names, trademarks, service names and service marks (i) which consist of or which include "Bendix" or "Fram," or (ii) "Stromberg" in Asia, Australia and South Africa.

(D) Respondent shall make available to the New Company adequate administrative, sales and service personnel to carry on the businesses to be transferred to New Company.

(E) Respondent shall grant a non-exclusive royalty-free license to the New Company on reasonable terms and conditions to use the name "Bendix" in the United States for a period of five (5) years from the effective date of this order in connection with the sale of (i) automotive starter drives of the general type manufactured by Bendix's Motor Components Division and (ii) Automobile Chemicals.

(F) Respondent shall, concurrently with the above-described transfers, grant to the New Company the right to purchase, on reasonable terms and conditions no less favorable than those offered to any other customers for replacement use (but subject always to the requirements of law), for a period of five (5) years from the effective date of this order, and for any part of said five year period, all or any part of the New Company's requirements of

Bendix Ignition Parts, as the New Company, at its option shall desire.

(G) Unaudited pro forma financial statements of the New Company shall be and are attached and made a part of this order as Exhibit IV.

III

It is further ordered, That:

(A) As of the date of transfer to New Company of the assets and businesses to be transferred pursuant to Part II of this order, the New Company will have a Net Parent Investment of not less than forty-two (42) million dollars (including good will not to exceed \$3.2 million).

(B) Pending the transfer of the assets and businesses to the New Company pursuant to Part II of this order, respondent shall use its best efforts to conduct such businesses in the ordinary course, and shall not make any change in the businesses to be divested or in the New Company (apart from making changes in the ordinary course of said businesses) which would impair the capacity of the New Company to continue the businesses transferred to the New Company pursuant to this order.

(C) Pending the spin-off date, respondent shall use its best efforts to assist the New Company in commencing business, and in promoting its products and independent corporate identity. Prior to the spin-off date, respondent will notify all customers of the businesses transferred to the New Company that the New Company is a successor to Bendix and/or Fram with respect to the divested product lines, and that its products are those previously sold or furnished by Bendix or Fram.

(D) Pending the spin-off date, the New Company, in order to insure an orderly transfer, may use all Bendix and Fram trademarks, trade names, service names and service marks previously used in connection with any lines of business transferred to it, and may inform others that it is associated with, and is a subsidiary of, Bendix and Fram.

(E) Respondent shall not, without the consent of the New Company, employ for three (3) years after the spin-off date, any personnel (i) whose duties relate exclusively to the assets or businesses to be transferred to the New Company pursuant to Part II of this order, or (ii) as shall be transferred to the New Company under Part II(D). Respondent will use its best efforts to encourage such persons to become employed by the New Company.

(F) In the period beginning on the date the New Company is organized pursuant to Part II(A) hereof until five years after the spin-off date, respondent shall not loan any sum of money or other thing of value to, or extend or advance credit to, or indemnify or guarantee the obligations of, the New Company, other than with respect to products or services sold on credit by respondent to the New Company in the ordinary course of business.

(G) (1) Immediately after the New Company is organized, respondent shall vote the stock of the New Company for the election of an interim board of directors to serve until the election of an initial board of directors;

(2) On or prior to the spin-off date, respondent shall cause the election of an initial board of directors of the New Company whose initial terms shall not exceed one (1) year;

(3) Respondent shall not vote any of the stock of the New Company except (a) as provided in Subparagraph 1 of Part III(G), (b) with respect to organizational matters, and (c) with respect to matters preparatory to spin-off;

(4) No member of the initial board of directors of the New Company shall at the time of his election or during the period of his service be an officer, director, or employee of respondent; and

(5) Subsequent to the election of an initial board of directors of the New Company, no employee, officer, or director of respondent shall concurrently be an employee, officer or director of the New Company.

IV

It is further ordered, That:

(A) Within two (2) years of the effective date of this order, respondent shall divest itself of all right, title and interest in the New Company (1) by transferring the capital stock of the New Company to persons who are at the time owners of Bendix common stock or Bendix common and preferred stock, or (2) by means of a public offering of the stock of the New Company which is registered pursuant to the Securities Act of 1933, or (3) by any combination of (1) and (2) above; subject always to the provisions of Paragraph (B) of this Part.

(B) In no case shall respondent knowingly sell, divest, or otherwise transfer, directly or indirectly, any stock of the New Company to any person (other than an underwriter or selling dealer) who is at the time of the transfer the beneficial owner of more than two (2)

percent of the outstanding common stock of Bendix; *Provided, however,* That in the event of a transfer of New Company stock under Part IV(A)(1) or (3) hereof, nothing in this order shall prohibit any of the shareholders of Bendix who are the beneficial owners of more than two (2) percent of the outstanding common stock of Bendix from exercising any rights they may have as such shareholders to obtain their pro-rata shares of any shares of stock of the New Company; and *Further, provided, however,* That in the event of a public offering of New Company stock under Part IV(A)(2) or (3) hereof, respondent shall exercise its best efforts to achieve a wide distribution of said stock.

V

It is further ordered, That respondent shall:

(A) Not later than sixty (60) days after completion of the transfers described in Part II hereof, furnish to the Commission an independently certified balance sheet of the New Company.

(B) Cause the New Company to furnish to the Commission, within one hundred twenty (120) days following the close of its first fiscal year, an independently certified income statement and balance sheet with respect to its first fiscal year's operations.

(C) Submit concurrently to the Commission copies of all registration statements or amendments thereto filed with the Securities and Exchange Commission with respect to any distribution of stock pursuant to Part IV(A).

VI

It is further ordered, That, for a period of two (2) years from the spin-off date, respondent shall not engage in the United States in:

(A) The manufacture or sale of the product lines presently manufactured or sold by respondent as set forth in Exhibit II (other than sales of such products purchased from others and incorporated as component parts in other products sold by respondent or sold by respondent as spare parts for such other products).

(B) The manufacture or sale of automobile chemicals or of Bendix ignition parts except as provided in Part II (F) above; *Provided, however,* That to the extent that the New Company shall not during said two-year period purchase from respondent Bendix ignition parts in quantities equal to the then current production capacity for such parts of respondent, respondent may to this extent (i) manufacture and sell said ignition parts to new vehicle manufacturers for purposes of installation by them on new vehicles or for resale by

them through their service operations as replacement parts under said manufacturers' brand or trade names; (ii) manufacture and sell said ignition parts to other manufacturers of ignition parts for resale by said manufacturers under a brand or trade name other than respondent's; and (iii) manufacture and sell said ignition parts as part of an automotive tune-up kit which includes spark plugs; *Provided*, That respondent will make available, on reasonable terms and conditions, spark plugs to the New Company under the New Company's own trade name subject to respondent's then available production capacity.

VII

It is further ordered, That for ten (10) years from the effective date of this order, respondent shall not acquire, directly or indirectly, without the prior approval of the Commission, the share capital or assets (other than products acquired for use or resale in the ordinary course of respondent's business or other than the acquisition by respondent of the share capital or assets of any corporation not organized in the United States of which respondent owns more than 50 percent of the issued and outstanding share capital as of the effective date of this order) of any corporation engaged in the manufacture or sale in the United States of:

(A) Automotive filters; *Provided*, That nothing in this Subparagraph (A) shall prohibit respondent from acquiring the share capital or assets of any corporation engaged at the time in the manufacture or sale of automotive filters solely to any vehicle manufacturers for purposes of installation by them on any vehicles or for resale by them through their service operations as replacement parts;

(B) Areospace filters;

(C) Liquid separators; or

(D) Automobile parts (other than automotive filters which are covered separately by Subparagraph (A) of this Part VII); *Provided*, That, nothing in this Subparagraph (D) shall prohibit respondent from acquiring the share capital or assets of:

(1) Any corporation engaged at the time in the manufacture or sale of such automobile parts solely to any vehicle manufacturers for purposes of installation by them on any vehicles or for resale by them through their service operations as replacement parts, or to any other manufacturer of such automobile parts for resale by such manufacturer under a brand or trade name other than Respondent's; or

(2) Any corporation engaged at the time in the manufacture

or sale of such automobile parts whose sales of such automobile parts during the calendar year preceding acquisition (exclusive of sales to any vehicle manufacturers for purposes of installation by them on any vehicles or for resale by them through their service operations as replacement parts) did not exceed twenty (20) percent of said corporation's total sales and were not in excess of One Million Dollars (\$1,000,000).

The provisions of this Part VII of this order shall apply to any arrangements pursuant to which respondent acquires the market share of any concern, corporate or non-corporate, which is engaged in the manufacture of automotive filters, aerospace filters, liquid separators, or automobile parts other than automotive filters (a) through such concern discontinuing the marketing, distribution and/or sale of any said products under its own trade name or labels and thereafter distributing such products under respondent's trade names or labels, or (b) by reason of such concern's discontinuing the manufacture of any of said products or the sale of any of said products to certain customers, and thereafter transferring to respondent customer lists or in any other way making available to respondent access to customers or customer accounts for any of said products.

No acquisition made by respondent pursuant to the provisions contained in this Part VII shall be deemed immune or exempt from the provisions of the antitrust laws by reason of anything contained in this order.

VIII

It is further ordered, That respondent shall, within six (6) months after the effective date of this order, and every six (6) months thereafter, until respondent has fully complied with Parts II through VI of this order, submit in writing to the Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, and has complied with Parts II through VI of this order. All compliance reports shall include such other information and documentation as may hereafter reasonably be required to show compliance with this order.

With respect to Part VII of this order, respondent shall, on the first anniversary date of the effective date of this order and on each anniversary date thereafter to and including the tenth anniversary date, submit a report, in writing, setting forth in detail the manner and form in which respondent intends to comply, is complying and has complied with Part VII of this order, a list of all acquisitions or mergers made by respon-

dent in the categories described in Part VII, the date of such acquisition or merger, the products involved, and such additional information relating thereto as may from time to time reasonably be required.

IX

It is further ordered, That Respondent shall notify the Commission 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, or any other change in the corporation, which may affect obligations arising out of this order.

EXHIBIT I

The assets of Bendix's Motor Components Division directly involved in or related to the manufacture or sale of bicycle brakes and not to be transferred are:

General Office Equipment

1	Friden Calculator
10	Desks
3	L. H. Secretarial Desks
10	Desk Chairs
3	Secretarial Chairs
3	Typewriters
8	Office Tables
16	4-Drawer Files
1	Remington Rand Kardex
6	Two-Drawer Files
13	Side Chairs
2	Arm Chairs
1	Drafting Table/Stool
2	Bookcases
2	Texas Instrument Desk Calculators

Other Equipment

1	1-5/8"—RB-6 Acme Gridley Screw Machine
1	1-5/8"—RB-8 Acme Gridley Screw Machine
2	Desks in Laboratory
3	Chairs in Laboratory
1	Wheel Spoker Fixture and Stand
1	Truing Fixture and Stand
4	Filing Cabinets (4 Drawer)—Prints and Records and Pacts
1	Work Bench (12 ft. × 28 in.)
2	Large Vises
1	Tool Chest (4- 1/2 ft. High)
1	Toledo Scale and Stand
1	Endurance Machine No. 1 (Coaster Brake)
1	Dynamometer Machine with Bench and Wattmeter Dynamometer Controls

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1	Parts Cabinet (7 ft. High × 5 1/2 ft. Wide × 20 in. Deep)
1	Parts Cabinet (7 ft. High × 3 ft. Wide × 18 in. Deep)
1	Grinding Wheel
1	Air for Dynamometer—Spoke Machine—and Inflating Tires
1	Endurance Machine No. 2 (Three Speed and Coaster Brake)
1	Rack for Tires—Rims, etc. (9 ft. Long × 7 ft. High × 2 ft. Deep)
1	Storage Shelves (9 ft. Long × 7 ft. High × 18 in. Deep)
1	Storage Shelves (7 ft. 8 in. Long × 7 ft. High × 22 in. Deep) 220 Volt Outlets
3	Bicycle Repair Stands
12	Bicycles and 8 Out on Test
2	Tool Pegboards (on Wall)
1	Drafting Table
	Miscellaneous Gages, Fixtures, etc.

EXHIBIT II

The product lines of Bendix's Motor Components Division, Bendix's Filter Division, Bendix's Fuel Devices Division, Fram's Campbell Filter Company, Fram's Industrial Filter Division and Fram's General Products Division to be transferred to New Company are:

New or remanufactured starter drives for gasoline, diesel and turbine applications
 Electric fuel pumps
 Electric clutches
 Carburetors (L. P. gas and petroleum)
 Flame arrestors
 Zenith filters
 Aircraft filters
 Aviation fuel handling filter water separators and fuel condition monitors
 Automotive filters bearing the private labels of the customers of Campbell Filter Company and of the customers of Fram for such filters as of, or in the year preceding, the date of transfer to the New Company of the assets and businesses pursuant to Part II of this Order.
 Breathers and hydraulic fluid filters
 Filters for liquid separation and particulate matter removal
 Waste treatment systems
 Oil-water separator systems
 Paint spray filters
 Building heating system filters
 Building ventilating system filters
 Building air handling and air conditioning system filters
 Furnace air filters
 Building electronic air cleaners
 Grease filters
 Paint arrestor pads
 Dust sampling cassettes (coal mine applications)
 L. P. gas systems
 Carburetor repair kits and repair parts

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EXHIBIT III

The product lines of Bendix's Automotive After-market Operations Division to be transferred to New Company are:

New and remanufactured starter drives
 Automobile ignition parts (consisting of rotors, condensers, points, distributor caps, generator parts, alternator parts, starter parts, magneto parts, switches and parts therefor, coils, regulators and parts therefor, cables, and wiring and attaching parts therefor)
 Electrical fuel pumps
 L. P. gas systems
 Carburetor repair kits and repair parts
 Stromberg Carburetors
 Zenith carburetors and filters
 Automobile Chemicals (as defined in paragraph 4 of Part I of the Order)

EXHIBIT IV

NEW COMPANYBALANCE SHEET (PRO FORMA COMBINED)

SEPTEMBER 30, 1973
 (Unaudited)

<i>ASSETS</i>	(In millions)
<i>CURRENT ASSETS:</i>	
Cash	\$.8
Receivables	14.5
Inventories	19.0
TOTAL CURRENT ASSETS	34.3
LAND, BUILDINGS, EQUIPMENT—Net	12.7
GOODWILL	3.2
MISCELLANEOUS ASSETS	.5
TOTAL	<u>\$50.7</u>
 <i>LIABILITIES AND INVESTMENT</i>	
<i>CURRENT LIABILITIES:</i>	
Accounts Payable	5.3
Payroll and Pension Accruals	3.0
Federal Income Taxes	.4
State Income & Other Taxes	.7
Other Accrued Liabilities	.7
TOTAL CURRENT LIABILITIES	<u>\$10.1</u>
NET PARENT INVESTMENT	40.6
TOTAL	<u>\$50.7</u>

The accompanying footnotes constitute an integral part of this statement.

Decision and Order

NEW COMPANYINCOME STATEMENT (PRO FORMA COMBINED)FOR THE YEAR ENDED SEPTEMBER 30, 1973

(Unaudited)

(In millions)

Net sales	\$75.1
Cost of sales	<u>51.5</u>
GROSS PROFIT	23.6
Selling expense	7.8
Service expense	1.8
Administrative expense	<u>4.4</u>
TOTAL COMMERCIAL EXPENSE	14.0
Engineering expense	1.9
Other deductions	<u>.4</u>
PROFIT FROM OPERATIONS	7.3
Income taxes (at 48%)	<u>3.5</u>
NET INCOME	<u>\$ 3.8</u>

The accompanying footnotes constitute an integral part of this statement.

NEW COMPANY

FOOTNOTES TO BALANCE SHEET
AND INCOME STATEMENT(PRO FORMA COMBINED)

(Unaudited)

The amounts shown represent asset and liability balances as of September 30, 1973 and operating results for the year then ended of the divisions, subsidiaries, and product lines to be transferred to the New Company pursuant to the Order on the basis described below.

The amounts shown were calculated by (1) taking asset and liability balances and operating results from the appropriate divisional or subsidiary accounting records where such records reflected the identical operation which is to be transferred to the New Company, and (2) allocating assets, liabilities and operating results taken from the appropriate divisional or subsidiary accounting records where such records reflected more than the operation to be transferred to the New Company; provided, however, that no amounts have been allocated with respect to the operations to be transferred for any headquarters administrative or interest expenses. In addition to the allocations mentioned above, cash and Federal income taxes were imputed to the operations to be transferred to the New Company. Cash was imputed at 1% of sales and taxes were imputed at the assumed tax rate of 48%.

No amount has been included for any contingent liabilities of the New Company which may be incident to the operations to be transferred to the New Company. No parent company indebtedness has been allocated to the operations to be transferred to the New Company since no such indebtedness will be transferred to the New Company.

Order Modifying Order to Cease and Desist

84 F.T.C.

It is my opinion that the accompanying New Company Balance Sheet and Income Statement (pro forma combined) (unaudited) fairly and reasonably represent the assets and liabilities as of September 30, 1973, and the operating results for the year then ended of the divisions, subsidiaries, and the product lines to be transferred to the New Company on the basis described in the footnotes thereto.

/s/

F. J. Svec

Vice President and Controller

April 5, 1974

IN THE MATTER OF

DIENER'S, INC., ET AL.

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

Docket 8804. Complaint, Nov. 25, 1969—Modifying Order, Nov. 19, 1974

Order modifying previous Commission order issued Dec. 21, 1972, 81 F.T.C. 945, by enlarging its language to permit respondent to make savings claims in relation to either the difference between its previous and present prices or in relation to differences between its prices and those of its competitors.

Appearances

For the Commission: *Edward D. Steinman* and *Donald L. Bachman*.
For the respondents: *Stein & Mitchell*, Washington, D. C.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondents, having filed in the United States Court of Appeals for the District of Columbia Circuit on Feb. 16, 1973, a petition to review and set aside an order to cease and desist issued herein on Dec. 21, 1972, and the Court having rendered its decision on Mar. 22, 1974 [494 F. 2d 1132], *affirming* the order to cease and desist, except for numbered Paragraph 2 of the order which it directed be modified;

Now, therefore, *It is hereby ordered*, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the opinion of the Court to read as follows:

ORDER

It is ordered, That respondents Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of

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Order Modifying Order to Cease and Desist

Tyson's Corner, Inc., and Mayfield Company, Inc., corporations, and their officers, and Milton Diener and Harold Reznick, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of rugs, carpets, floor coverings, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Diener's Storewide Carpet Sale," "Fantastic 6 Store Factory Inventory Clearance," or any other word or words of similar import or meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Using the words "Save" or "Savings" or any other word or words of similar import or meaning in conjunction with a stated dollar or percentage amount of savings between respondents' stated price and any other price used for comparison with that price, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual price at which a substantial number of principal retail outlets in the trade area regularly sell or offer the merchandise for sale or between the offering price and the actual bona fide price at which such merchandise had been sold or offered for sale on a regular basis to the public by the respondents for a reasonably substantial period of time in the recent, regular course of their business.

3. Using the words "Regular," "Reg.," or any other words of similar import and meaning, to refer to any price amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business and unless respondents' business records establish that said amount is the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business.

4. Using the words "area's competitive price," or words of similar import and meaning, to refer to any price amount which is appreciably in excess of the prices at which substantial sales of the

same merchandise have been made in respondents' trade area and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which merchandise has been sold in respondents' trade area.

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

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

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

6. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

7. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 2-6 of this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 2-6 of this order can be determined.

8. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

9. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of Tysons Corner, Inc., and Mayfield Company, Inc., corporations, and their officers, and Milton Diener and Harold Reznick, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, 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 fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

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

B. Falsely and deceptively advertising textile fiber products by:

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

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

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

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

It is further ordered, That 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.

It is further ordered, That respondents notify the Commission at least thirty days prior to any proposed change in any of 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, or any of them, which may affect compliance obligations arising out of this order.

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

IN THE MATTER OF

JOSEPHS FURNITURE CO., INC., ET AL.

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

Docket C-2599. Complaint, Nov. 19, 1974—Decision, Nov. 19, 1974

Consent order requiring a New York City furniture dealer, among other things to cease failing to make repairs on furniture delivered in damaged condition, and 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. Further, the order requires respondent to provide its customers with the right to submit grievances concerning merchandise to legally binding arbitration.

Appearances

For the Commission: *Carol H. Katz.*

For the respondents: *Norman D. Fiedler, New York, N. Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Josephs Furniture Co., Inc., a corporation, and Fred Radelman and Jerome Radelman, individually and as officers of said corporation, hereinafter 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 Josephs Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2233 Third Ave. New York, N. Y.

Respondents Fred Radelman and Jerome Radelman are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of said corporate respondent including the acts and practices hereinafter set forth. 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 purchasing, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and now are in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of furniture, appliances and related products.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have purchased, and continue to regularly purchase, furni-

ture, appliances and other merchandise from suppliers, distributors and manufacturers in states other than New York for the purpose of offering for sale, maintaining an available inventory for sale and to fill special purchase orders received from their customers.

PAR. 5. In the further course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, furniture, appliances and other merchandise, when sold, to be shipped from their place of business within the State of New York and have caused, and are now causing, such merchandise to be delivered to purchasers residing in the State of New York and in other states.

PAR. 6. In the course and conduct of their business and pursuant to special customer orders for furniture, appliances and other merchandise, respondents have delivered said furniture, appliances and other merchandise directly to their customers in an unopened and crated condition as received by respondents from out-of-state manufacturers.

PAR. 7. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their merchandise, respondents, in their salesrooms, have maintained, and are now maintaining, floor models and displays of furniture, and displays of appliances and other merchandise being offered for sale, on the basis of which their customers select and order such merchandise.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of the furniture, appliances and other merchandise being offered for sale, the terms and conditions under which merchandise will be sold and delivered, and the services that will be provided by the respondents.

Moreover, subsequent to making sales and deliveries, respondents and their employees have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and the manner in which respondents will perform various adjustments, replacements and repairs.

PAR. 9. By and through the use of the aforementioned floor models and displays, together with the aforesaid oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. Furniture and appliances sold by respondents will be delivered to the customer free from damages and defects.

2. Furniture and appliances which are delivered to purchasers with damages or defects will be repaired or replaced within a reasonable time.

3. Furniture and appliances which are delivered to purchasers with damages or defects will be repaired or replaced to the satisfaction of the purchaser.

PAR. 10. In truth and in fact:

1. In many instances, furniture and appliances sold by respondents are delivered to purchasers with damages and/or defects.

2. In many instances, furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced within a reasonable length of time.

3. In many instances, furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced to the satisfaction of the purchasers.

Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products and services as set forth in Paragraphs Eight and Nine were, and are, false, misleading, unfair and deceptive.

PAR. 11. By virtue of respondents' aforementioned false, misleading, deceptive and unfair representations, acts and practices, customers have been induced to pay substantial sums of money to respondents for furniture and appliances. Respondents have received such sums and have failed to offer or agree to refund payments to purchasers, or cancel contractual obligations in regard thereto, when merchandise has been, or is delivered, in a damaged and/or defective condition or when such merchandise has not been repaired or replaced by respondents within a reasonable period of time.

PAR. 12. 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 and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Eleven are incorporated herein by reference as if fully set forth verbatim.

PAR. 13. In the course and conduct of their business, as aforesaid, respondents are engaging, and for some time last past have engaged, in

the collection of debts allegedly due and owing to Josephs Furniture Co., Inc. pursuant to contracts or other agreements relating to the purchase of respondents' merchandise.

PAR. 14. In attempting to induce and coerce payments of purportedly due or delinquent accounts, respondents and their representatives or agents have sent through the United States mails dunning letters, notices and similar material which contain statements and representations in the form of harassment or threats, including, but not limited to, the following statements and representations:

1. * * * unless the arrears on your account are paid in full WITHIN THREE (3) DAYS of this date, the assignment of wages you signed will be filed with your employer * * *.
2. you were not at home therefore our attorney will secure a legal warrant of seizure. The next one to call will be a City Marshal and the fact that you are not home will not stop him from repossessing the merchandise you failed to pay for.

PAR. 15. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not specifically set forth herein, respondents have represented, directly and by implication, that:

1. Failure to pay the amount claimed as owing within a stated period of time will result in the assignment of the debtor's wages.
2. Failure to pay the amount claimed as owing after notice of intent to repossess will result in the repossession of the merchandise.

PAR. 16. In truth and in fact:

1. Respondents' representations that wage assignments will be obtained are not bona fide representations in that assignment of wages, with respect to retail credit sale transactions, are prohibited by state law and respondents have not caused and cannot cause such assignments.

2. Failure to pay the amount claimed as owing after notice of intent to repossess, has not resulted in the repossession of the merchandise.

Therefore, the statements and representations as set forth in Paragraphs Fourteen and Fifteen are false, misleading and deceptive.

PAR. 17. In furtherance of their business in commerce, and to obtain payments of contractual obligations resulting from the aforesaid deceptive and unfair sales, respondents, in many instances, have engaged, and continue to engage, in the practice of instituting lawsuits without serving customers with a summons and complaint. As a result thereof, respondents have been granted default judgments against such customers.

Therefore, respondents' failure to insure that their customers are served with a summons and complaint and receive notice of legal proceedings, in furtherance of their deceptive sales practices, is an unfair

and deceptive practice, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 18. The use by respondents of the aforesaid unfair, deceptive and misleading debt collection practices in conjunction with respondents' other deceptive and unfair sales and servicing practices in commerce as set forth in Count I has enabled respondents to unfairly receive remuneration and financial gain in their business. All of respondents' practices are intertwined and mutually supportive so as to comprise a totality of unfair and deceptive practices in commerce.

PAR. 19. The aforesaid acts and practices of respondents, as herein alleged, are inequitable, unfair, oppressive, exploitative and cause substantial injury to consumers, and constituted, and now constitute, unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 20. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 21. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 22. Subsequent to July 1, 1969, respondents Josephs Furniture Co., Inc., Fred Radelman and Jerome Radelman, in the ordinary course and conduct of their business and in connection with credit sales as "credit sales" is defined in Regulation Z, have caused and are now causing their customers to execute retail installment contracts, hereinafter referred to as "the contract."

PAR. 23. By and through the use of the contract set forth in Paragraph Twenty-two, respondents:

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

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

3. fail to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

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

PAR. 24. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The 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, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Josephs Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State

of New York, with its office and principal place of business located at 2283 Third Ave., New York, N. Y.

Respondents Fred Radelman and Jerome Radelman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER I

A. *It is ordered*, That respondents Josephs Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Fred Radelman and Jerome Radelman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture and appliances, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

a. Respondents will cause an assignment of wages.

b. Respondents will cause repossession of merchandise after failure to pay the amount claimed as owing following notice of intent to repossess; or misrepresenting, in any manner, respondents' repossession procedures.

2. Failing to give notification of the commencement of legal action by respondents against a customer by mailing a summons and complaint to such customer's last known address, and failing to obtain from the post office a certificate of such mailing. Such notice shall be in addition to any other notification or service required by law, practice or custom. Such summons and complaint to be sent by first class mail by respondents or their attorney with instructions on the face of the envelope "Do not forward. Address Correction Requested." In the event that such mail is returned as undeliverable by the Post Office or if the residence address of the defendant is unknown, the summons is to be mailed to the customer, care of the employer or place of employment of the customer if known, in a sealed envelope not indicating on the outside thereof, directly or indirectly by the return address or otherwise, that the communication is from an attorney or concerns an alleged debt.

3. Failing to provide consumers with contracts, credit cost disclosures and other mandated written disclosures printed in English and Spanish when the sales presentation was made, either partially or wholly, in the Spanish language.

B. *It is further ordered*, That beginning the effective date of this order, respondents:

1. Inform all customers at the time of sale both orally and in writing that, if furniture and/or appliances are delivered in a defective or damaged condition, the customer has the right and option to cancel the contract and obtain a refund of all monies, by notifying respondents, in writing, within ten (10) days of the receipt of such damaged or defective merchandise. Written notice of this right of cancellation shall be furnished to all customers on the face of all order forms, sales contracts and invoices executed by the customer, with such conspicuousness and clarity as is likely to be read and understood; *Provided, however*, That the provisions of Paragraph "B," parts "1" and "2" of the order shall not apply to merchandise sold "as is," conspicuously designated as such on order forms, sales contracts and invoices executed by the customers, nor to sales of merchandise to customers who have knowledge of damage to, or defects in, particular merchandise and have given written consent to purchasing same.

2. Refund immediately all monies to customers who have requested contract cancellation in writing within ten (10) days from the date of actual delivery of defective or damaged merchandise except that in lieu of making such a refund, respondents may, with the written consent of, and with no additional cost to, a customer, replace or repair defective or damaged merchandise, such replacement or repair to be fully, satisfactorily, and promptly performed, in accordance with Paragraph B, Subpart 3, of this Order I. In such a case, the customer who consents to accept replacement or repair in lieu of a refund, may cancel the contract with a refund of all monies by notification to respondents in writing within ten (10) days from the date of actual delivery or redelivery of any replacement or repaired merchandise that is itself defective or damaged.

3. (a) For purposes of this order, respondents shall make all refunds or obtain the voluntary written consent of the customer for replacement or repair, as provided for in this order, within one (1) week of the receipt of the customer's request for cancellation; shall complete all repairs, pursuant to a written consent for repairs, within two (2) weeks from the date of such written consent and shall make full replacements, pursuant to a written consent for

replacement, within thirty (30) days from the date of such written consent. In all other instances, where a customer has requested repairs or replacements, orally or in writing, within ten days following the delivery of defective, damaged or nonconforming merchandise, respondents shall investigate such complaints forthwith and complete repairs within three (3) weeks and replacements within forty (40) days of the receipt of such request. For purposes of Paragraph B, Subpart 2, of this Order I, the term "satisfactorily" may be a subject of an arbitration held pursuant to this order.

3. (b) If the repair or replacement cannot be completed within the time specified by this order, respondents shall notify the customer, orally and in writing, at least five (5) business days prior to the scheduled completion date of respondents' inability to complete repairs or replacement by such date and shall cancel the contract with a full refund within one week; except that in lieu of making such refund, respondents may, at the option of the customer, obtain the customer's voluntary written consent for an extension of the date set for completion, setting forth a date certain for completion, which shall be a date by which respondents actually expect to complete performance.

4. For a period of two (2) years, maintain and produce for inspection and copying, adequate records to disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting contract cancellation, refund, replacement or repair.

C. *It is further ordered*, That in addition to other rights given to a customer pursuant to this order, if the respondents and a customer are unable to agree upon a settlement of any controversy involving the delivery or repair of any damaged or defective furniture, appliances, or other merchandise, or the failure to replace or repair such damaged or defective merchandise or to make cancellations with refunds with respect thereto, then, at the option of the customer, such customer shall have the right to submit the issues to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the consumer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

D. *It is further ordered*, That respondents comply with and abide by any award or decision rendered pursuant to the arbitration procedures of Subparagraph C.

Furthermore, respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in an action for money allegedly due the respondents or their assignees.

E. (1) *It is further ordered*, That respondents shall provide adequate notification to customers of their right to submit such controversy to arbitration and that respondents incorporate the following statement on the face of all sales contracts with such conspicuousness and clarity as is likely to be read and understood by customers.

NOTICE

Any right or claim which the customer may have arising out of or relating to this contract or any breach thereof shall be settled, at the option of the customer, by arbitration. Such arbitration shall be conducted in accordance with Arbitration Rules of the Consumer Business Arbitration Tribunal of the Better Business Bureau of Metropolitan New York, Inc. Consumers seeking arbitration should contact the Better Business Bureau of Metropolitan New York, Inc., whose offices are located at 110 Fifth Avenue, New York, New York 10011, telephone (212) 989-6150.

Under New York State law, arbitration, if undertaken, is legally binding and final.

E. (2) Respondents are authorized and directed to change the instructions, contained in the notice set forth in Order I, Paragraph E(1), as to how to secure arbitration if circumstances require.

ORDER II

It is further ordered, That respondents Josephs Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Fred Radelman and Jerome Radelman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 12 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

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

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

3. Failing to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

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

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

ORDER III

A. *It is further ordered*, That for a period of one year, respondents post in a prominent place in each salesroom or other area wherein respondents sell furniture or other products and services, a copy of this cease and desist order, with a notice that any customer or prospective customer may receive a copy on demand.

B. *It is further ordered*, That respondents prominently display the following notice in two or more locations in that portion of respondents' business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO CREDIT CUSTOMERS

IF THE DEALER IS FINANCING OR ARRANGING THE FINANCING OF YOUR PURCHASE, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN ANY DOCUMENT OR OTHER PAPERS WHICH WOULD BIND YOU TO SUCH A PURCHASE.

C. *It is further ordered*, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

E. *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.

F. *It is further ordered*, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

APPENDIX A

AGREEMENT OF PARTIES—The parties shall be deemed to have made these Rules a part of their arbitration agreement. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

ADMINISTRATOR—When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute BBB the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

PANEL OF ARBITRATORS—The BBB shall establish and maintain a Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

CHANGE OF CLAIM—After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

INITIATION UNDER A SUBMISSION—Parties to any existing dispute may commence an arbitration under these Rules by filing at the BBB two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought.

INITIATION UNDER AN ARBITRATION PROVISION IN A CONTRACT— Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party may give notice to the other party of his intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and

(b) By filing at the office of the BBB two (2) copies of said notice, together with two (2) copies of the arbitration provisions of the contract.

The BBB shall give notice of such filing to the other party. If he so desires, the party upon whom the demand for arbitration is made may file an answering statement in duplicate with the BBB within seven days after notice from the BBB, in which event he shall simultaneously send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

FIXING OF LOCALE—The parties may mutually agree on the time and place where the arbitration is to be held. If any party requests that the hearing be held at a specific time and place and the other party files no objection thereto within seven days after notice of the request, the time and place shall be the one requested.

If the time and place is not designated within seven days from the date of filing the Submission the BBB shall have power to determine the time and place. Its decision shall be final and binding.

QUALIFICATIONS OF ARBITRATOR—No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

APPOINTMENT FROM PANEL—The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission, the BBB shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the BBB. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the BBB shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the BBB shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

NUMBER OF ARBITRATORS—In disputes involving amounts of \$5000 or less, there shall be one Arbitrator. In all other cases there shall be one Arbitrator unless one or both the parties specifies three Arbitrators. If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed.

NOTICE TO ARBITRATOR OF HIS APPOINTMENT—Notice of the appointment of the Arbitrator, shall be mailed to the Arbitrator by the BBB, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

DISCLOSURE BY ARBITRATOR OF DISQUALIFICATION—Prior to accepting his appointment, the prospective Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial

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Arbitrator. Upon receipt of such information, the BBB shall immediately disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall so advise the BBB in writing. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

VACANCIES -- If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

REPRESENTATION BY COUNSEL -- Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the BBB of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

STENOGRAPHIC RECORD -- The BBB shall make the necessary arrangements for the taking of a stenographic or electronic record whenever such record is requested by a party. The requesting party or parties shall pay the cost of such record, unless otherwise agreed.

INTERPRETER -- The BBB shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service if a volunteer interpreter cannot be secured.

ATTENDANCE AT HEARINGS -- Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

ADJOURNMENTS -- The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

OATHS -- Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of his office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person or, if required by law or demanded by either party, shall do so.

WITNESSES, SUBPOENAS, DEPOSITIONS -- (a) The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the Arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the Arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

MAJORITY DECISION -- Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

ORDER OF PROCEEDINGS -- A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the

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hearing, the presence of the Arbitrator and parties, and counsel, if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions or other examination. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions and other examination. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

ARBITRATION IN THE ABSENCE OF A PARTY -- Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

EVIDENCE -- The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

EVIDENCE BY AFFIDAVIT AND FILING OF DOCUMENTS -- The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

INSPECTION OR INVESTIGATION -- Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the BBB to advise the parties of his intention. The Arbitrator shall set the time and the BBB shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

CONSERVATION OF PROPERTY -- The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

CLOSING OF HEARINGS -- The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of briefs, the later date

shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

REOPENING OF HEARINGS -- The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. If the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator may reopen the hearings, and the Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

WAIVER OF ORAL HEARING -- The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the BBB shall specify a fair and equitable procedure.

WAIVER OF RULES -- Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

EXTENSION OF TIME -- The parties may modify any period of time by mutual agreement. The BBB for good cause may extend any period of time established by these Rules, except the time for making the award. The BBB shall notify the parties of any such extension of time and its reason therefor.

COMMUNICATION WITH ARBITRATOR AND SERVING OF NOTICES -- (a) There shall be no communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the BBB for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

TIME OF AWARD -- The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

FORM OF AWARD -- The award shall be in writing and shall be signed either by the sole Arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law.

SCOPE OF AWARD -- The Arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties.

The award may require specific performance of a contract; require the acceptance or replacement of merchandise; fix allowances for defective merchandise; declare a contract breached in whole or in part; and/or award money damages in the alternative or otherwise; but the foregoing shall not limit the power of the arbitrators to grant any other remedy or relief which they deem just and equitable within the framework of the Submission or the contract before the arbitrators.

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AWARD UPON SETTLEMENT -- If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

DELIVERY OF AWARD TO PARTIES -- Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the BBB, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS -- The BBB shall, upon the written request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

APPLICATIONS TO COURT -- No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

EXPENSES -- The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic or electronic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required travelling and other expenses of the Arbitrator and of BBB representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

ARBITRATOR'S FEE -- Members of the Panel of Arbitrators serve without fee in arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee. Any arrangements for the compensation of an Arbitrator shall be made through the BBB and not directly by him with the parties.

INTERPRETATION AND APPLICATION OF RULES -- The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the BBB for final decision. All other Rules shall be interpreted and applied by the BBB.