

IN THE MATTER OF
EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, Jan. 31, 1977

With certain provisos Commission adopts paragraph nine of ALJ's Jan. 5, 1977, protective order.

*Appearances**

ORDER

The administrative law judge has certified to the Commission paragraph nine of his January 5, 1977, protective order. The certification requests that the Commission approve and adopt the order provision or take such other action as it may deem appropriate. The Commission has determined to adopt paragraph nine subject to the following provisos: 1) with respect to documents only portions of which have been designated as "confidential" pursuant to the protective order, the Commission's assurance of prior notification will extend only to those portions; 2) in the case of release of a document, or portion of a document, designated as "confidential," in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process, the Congressional committee or subcommittee or the court will be advised that the party which supplied the document considers the material to be confidential and the party will be provided ten days' prior notice where possible, and in any event as much advance notice as can reasonably be given.

It is so ordered.

* For reasons of economy, the *Appearances* are not being reproduced herein. Information regarding *Appearances* may be obtained from the Public Reference Branch, Federal Trade Commission, Washington, D.C.

Order

89 F.T.C.

IN THE MATTER OF
CENTURY 21 COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Feb. 1, 1977

Commission affirms ALJ's ruling that he has authority to issue an access order.

Appearances

For the Commission: *Sandra M. Wilmore, June S. Katz, Donna H. Greenfield, W. Randolph Smith and Anne E. Dewey.*

For the respondents: *G. F. Richman, Frates, Floyd, Pearson, Stewart, Richman & Greer, Miami, Fla.; W. L. Miller, Stein, Halpert & Miller, Washington, D.C.; Jerome S. Richman, Miami, Fla.; Joel Bennett, Washington D.C.; and Joseph S. Paglino, Intervenor for Commodore Plaza, Miami, Fla.*

ORDER

Respondents have applied for review of the administrative law judge's order of December 28, 1976, granting complaint counsel's motion for an order compelling the granting of access to Morgan's Bay, a body of water contiguous to the beach area leased to owners at respondents' condominium project. Pursuant to Section 3.23(b) of the Commission's Rules of Practice, the ALJ determined that his ruling that he has authority to issue an access order was appropriate for immediate review. Confining ourselves to the question of the law judge's authority to issue such an order, we affirm.¹

We would add to the law judge's treatment of the issues that respondents' application does not challenge the Commission's statutory authority to issue such an order. Sections 6(a) and 6(g) of the Federal Trade Commission Act authorize the Commission "[t]o gather and compile information concerning, and to investigate from time to time the * * * business, conduct, [and] practices * * * of any corporation engaged in or whose business affects commerce * * *" and "to make rules and regulations for the purpose of carrying out the provisions" of the FTC Act. The latter provision is to be construed in a manner that will "render the statutory design effective in terms of the policies behind its enactment and to avoid an interpretation which would make such policies more difficult of fulfillment, particularly where * * * that interpretation is consistent with the plain language of the statute." *National Petroleum Refiners Ass'n v.*

¹ We, therefore, have not considered respondents' various arguments going to the relevancy of the requested discovery or their suggestion that an access order would be unlawful because a portion of the lake bottom is owned by other private parties.

FTC, 482 F.2d 672, 689 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974). Orders requiring access to tangible, as well as documentary, evidence are well-established. *See* Fed. R. Civ. P. 34. We, therefore, can discern no reason why the language of Sections 6(a) and 6(g) is not sufficiently broad to authorize such relief, provided that "the inquiry is within the authority of the agency, the demand is not too indefinite and the information is reasonably relevant." *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Accordingly,

It is ordered, That the aforesaid ruling of the administrative law judge that he has authority to issue an access order be, and it hereby is, affirmed.

Complaint

89 F.T.C.

IN THE MATTER OF

EVERSEAL WATERPROOFING CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT.*Docket C-2865. Complaint, Feb. 4, 1977 --- Decision, Feb. 4, 1977*

Consent order requiring a Newton, Mass., seller and distributor of waterproofing products and services, and its subsidiaries, among other things, to cease misrepresenting their guarantees; the nature, efficacy, and performance characteristics of their products; and the size and volume of their business. Further, the order requires respondents to maintain specified records; make prescribed disclosures; and respond to requests for service within seven days. Additionally, respondents must provide a three-day cooling-off period during which customers may cancel transactions and receive prompt refunds; maintain a responsible customer relations department; and institute a surveillance program designed to ensure compliance with the order.

Appearances

For the Commission: *William F. Connolly* and *Lois M. Woocher*.
For the respondents: *Harry J. Greenblatt, Kaplan & Arnoldy*,
Boston, Mass.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Everseal Waterproofing Corporation, a corporation, Everseal Waterproofing of New Hampshire, Inc., a corporation, Everseal Corporation of Maine, a corporation, and Irving Silverstein, individually, and William A. Epner, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Everseal Waterproofing Corporation, hereinafter referred to as Everseal, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 958 Watertown St., Newton, Massachusetts.

Respondent Everseal Waterproofing of New Hampshire, Inc., hereinafter referred to as Everseal of New Hampshire, is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New Hampshire with its principal office and place of business located at 9 Capitol St., Concord, New Hampshire.

Respondent Everseal Corporation of Maine, hereinafter referred to as Everseal of Maine, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine with its principal office and place of business located at 57 Exchange St., Portland, Maine.

Respondent Irving Silverstein is a former officer, director and stockholder of each of the corporate respondents. He has formulated, directed and controlled the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is 42 Sierra Road, Hyde Park, Massachusetts.

Respondent William A. Epner is an officer, director and sole stockholder of each 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 corporate respondent, Everseal Waterproofing Corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution of residential and commercial waterproofing products and services to the public.

Respondents place into operation and implement a sales program whereby members of the general public, by means of advertisements placed in printed media of general circulation and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of sales personnel and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign agreements (contracts) for the purchase of respondents' waterproofing products and services.

Respondents receive substantial income from the results of such agreements.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause and for some time last past have caused their advertising and promotional material and their said products, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to be shipped and transmitted to, from and between their several places of business located as aforesaid, and to prospective purchasers thereof located in various other States of the United States, other than the state of origination, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said products and services in and

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

PAR. 4. In the course and conduct of their business as aforesaid, for the purpose of obtaining leads or prospects for the sale of residential and commercial waterproofing products and services, and for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen and representatives, cause prospective purchasers of their waterproofing products and services who have answered respondents' advertisements to be interviewed by salesmen at the place of residence of individual prospective purchasers. Said salesmen endeavor to sell respondents' waterproofing products and services and for the purpose of inducing the sale of said products and services, said salesmen make many statements and representations, directly or by implication, both orally and by means of brochures or other printed material displayed by the salesmen to prospective purchasers. In conjunction therewith, respondents have made certain statements concerning the nature of their offer and their business, the efficacy, value, price, worth and performance of the waterproofing products and services and the guarantee offered by respondents. Typical and illustrative, but not all inclusive of said statements and representations relating to respondents' products and services are the following:

A. Newspaper Advertisements

US Gov't. Pat. #2,277,286.

Basements Waterproofed Efficiently,
Inexpensively.

Over 100,000 Basements Throughout the Country
Have Been Successfully Sealed Against Water
Seepage By This Process.

No Problem Too Small or Too Large.

You Hold 25% of Total Price for 1 Year To
Guarantee That We Have Successfully Sealed
Your Basement.

For Free Estimates Call or Write
Everseal Waterproofing Corp.
340 Main Street, Worcester, MA 791-0800
In Boston 969-7800
Lowell 459-7300
Manchester, NH 625-9777
Providence, RI 421-4222
Portland, ME 77-1000.

No Digging. All Work Done From the Outside.

No Damage to Lawns, Shrubs, Walks.

Learn About the Danger Signs of Water Seepage.
Send for Free Everseal Booklet Today.

B. Radio Advertisements

The Everseal method has been used in over 100,000 basements throughout the country, and it's available to you right here and now.

You hold 25% of the total price for 1 year, to guarantee that Everseal has successfully sealed your foundation.

The Everseal process is the most economical and reliable answer for all basement waterproofing problems.

Homeowners * * * Do you have a wet or damp basement? Everseal Waterproofing can solve your problem efficiently and inexpensively.

The Everseal method seals from the outside and there's no damage to lawns, shrubs, walks or driveways.

C. Statements in Brochures and Pamphlets

US Gov't. Pat. #2,277,286.

The most economical and reliable answer for all basement waterproofing problems.

It has also been used in major structures, such as the Coffey Dam across the Columbia River during construction of the Grand Coulee Dam.

Pressure pumping is a method of applying bentonite . . . which forms a perfect seal on EXTERIOR WALLS without excavation and seals the cracks in masonry, concrete brick, or concrete block by following the crack through the wall, thus forming a complete closure against moisture and water.

* * * forming a perfect seal between the foundation and the fill repelling all water seepage attempting to enter the basement.

* * * effectively sealing walls against seepage, dampness, sweating, and surface water.

Bentonite, pumped under pressure, not only seals the outside and inside walls (at the cracks) but also impregnates outside soil to a width of twelve inches from basement walls, thus forming a zone of protection,

Complaint

89 F.T.C.

effectively sealing off water.

This material will not evaporate, wash off, or deteriorate through age, or soil condition. It makes a guaranteed waterproofing job.

You hold 25% of total price for 1 year, to guarantee that we have successfully sealed your foundation.

5 year written Everseal guarantee.

D. Oral Statements by Sales Representatives

The Everseal process will definitely solve your problem. You won't have even a drop of water.

The Bentonite is pressure pumped into the ground, pushes the water out of the ground and the walls, and hardens, filling cracks and preventing water from seeping in.

We have done many jobs in this area and successfully solved even the most difficult basement water problems.

Once we pour this stuff in, you'll never have any more problems.

The work is absolutely guaranteed to eliminate your basement water problem.

All work is done from the outside.

The pumping will take from 2 to 3 days to complete.

I'm giving you a 25% discount from our regular price for paying in full.

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

1. Respondents' method of basement waterproofing is an exclusive, patented process.
2. Respondents' waterproofing process will seal all types of walls, floors, and foundations against water seepage.
3. Respondents' method of basement waterproofing will stop basement water damage completely and will keep basements dry permanently.

4. Respondents' waterproofing services are unconditionally guaranteed in writing and respondents' customers may hold 25 percent of the total price for one year to guarantee that respondents have successfully sealed the customers' basements.

5. Respondents have branch offices with complete sales and service facilities in several New England States.

6. Respondents' basement waterproofing process, which is applied from the outside, waterproofs basements without digging and without causing damage to shrubs, walks or driveways.

7. Respondents' waterproofing process has satisfactorily sealed over 100,000 basements against water seepage.

8. The waterproofing material (bentonite) used by respondents in their basement waterproofing services is not affected by soil conditions and the water table level.

9. The efficacy of bentonite as a waterproofing agent in the pressure pumping process is demonstrated by the successful use of bentonite as a waterproofing agent in the construction of dams, levees, and other major structures.

10. Respondents' waterproofing services are being offered for sale at special or reduced prices and purchasers are thereby being offered savings from respondents' regular selling price.

11. Respondents will provide prompt service when requested following completion of any waterproofing work.

PAR. 6. In truth and in fact:

1. Respondents' method of basement waterproofing is not exclusive or unique but has been and is utilized by other competing basement waterproofing companies.

2. Respondents' waterproofing process will not seal all types of basement walls, floors, and foundations against water seepage.

3. Respondents' method of basement waterproofing will not stop basement water damage completely and will not keep basements dry permanently.

4. Respondents' waterproofing services are not unconditionally guaranteed in writing but are subject to numerous conditions and limitations. Such conditions and limitations include: the contractual provision that respondents at their discretion may perform and charge for additional waterproofing services; respondents' offer of the 25 percent holdback provision is available only to selected customers; and respondents do not provide service to dissatisfied customers who hold back 25 percent of the total price.

5. Respondents do not maintain branch offices with complete sales and service facilities in several New England States.

6. Respondents' basement waterproofing process does not water-

proof basements from the outside without digging and without causing damage to shrubs, walks, or driveways. Respondents, in many cases, have done extensive digging and patching along the interior and exterior basement walls of the homes of their customers; respondents, in many cases, have dug or drilled holes into walks and driveways adjacent to the basement foundations of the homes of their customers.

7. Respondents' waterproofing process has not satisfactorily sealed over 100,000 basements against water seepage.

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

9. The efficacy of bentonite as a waterproofing agent in the pressure pumping process is not demonstrated by the successful use of bentonite as a waterproofing agent in the construction of dams, levees, and other major structures.

10. Respondents' services are not offered for sale at special or reduced prices, and savings are not thereby afforded respondents' purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have a regular selling price and the prices at which respondents' products are sold vary from customer to customer, depending on the resistance of the prospective purchaser.

11. Respondents do not provide prompt service to their customers following completion of any waterproofing work, but, in many instances, respondents' customers wait for weeks or months before any such service is rendered.

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

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

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

3. At the time respondents made the representations set forth in sections (1) and (2) of this paragraph, they had a reasonable basis from which to conclude that their basement waterproofing method will seal all types of basement walls, floors and foundations against water seepage completely and permanently and that the waterproof-

ing material (bentonite) used by the respondents is not affected by soil conditions and the water table level.

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

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

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

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

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

PAR. 11. In the further course and conduct of their business and in

the furtherance of their purpose of inducing prospective customers to execute contracts for their waterproofing products and services, respondents and their employees, salesmen and representatives, have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

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

PAR. 12. 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 as to the things hereinabove alleged.

PAR. 13. 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 waterproofing products and services of the same general kind and nature of those sold by respondents.

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

PAR. 15. The aforesaid acts and practices of 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 or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Everseal Waterproofing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 958 Watertown St., Newton, Massachusetts.

Proposed respondent Everseal Waterproofing of New Hampshire, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire with its office and principal place of business located at 9 Capitol St., Concord, New Hampshire.

Proposed respondent Everseal Waterproofing of Maine is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at 57 Exchange St., Portland, Maine.

Proposed respondent Irving Silverstein is a former officer of said corporations. He has formulated, directed and controlled the policies, acts and practices of said corporations and his address is 42 Sierra Road, Hyde Park, Massachusetts.

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 respondents Everseal Waterproofing Corporation, a corporation, Everseal Waterproofing of New Hampshire, Inc., a corporation, and Everseal Corporation of Maine, a corporation, their successors and assigns, and their officers, and Irving Silverstein, individually, and William A. Epner, individually and as an officer of the corporations, (hereinafter referred to as "respondents"), and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchisee, licensee, or other device, in connection with the advertising, offering for sale, sale and distribution of residential and commercial waterproofing products or services, or other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, that respondents employ an exclusive, patented process.

2. Representing, directly or by implication, that respondents' waterproofing process will seal all types of basement walls, floors and foundations against water seepage.

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

4. Failing to disclose in writing on the face of every contract for the pressure pumping process, in bold print, on an easily detachable form which shall be executed by the customer and retained by the seller and orally, prior to the signing of any contract, and in ten point boldface type in all advertisements, promotional materials and similar documents, the following notice:

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

4a. Failing to disclose in radio and other electronic media advertisements the following notice:

THE BENTONITE MATERIAL USED IN THE PRESSURE PUMPING PRO-

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

5. Representing, directly or by implication, orally, visually or in writing, that any of said products or services are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and unless respondents promptly and scrupulously fulfill all of their obligations and requirements directly or impliedly represented by the terms of the guarantee.

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

7. Representing, directly or by implication, that respondents will, by means of their pressure pumping process or in any other manner, waterproof basements without digging, without damage to walks or driveways, or without the necessity of having waterproofing work done inside the basement.

8. Making any claim or representation, orally, visually or in writing, relating to the efficacy, nature and performance characteristics of respondents' waterproofing products or services unless, at the time such claim or representation is made, respondents have a reasonable basis for such claim or representation which shall consist of competent engineering or other similar objective material.

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

(a) Which consist of documentation to support any and all claims or representations made after the effective date of this order in advertising or sales promotion material relating to the efficacy, nature and performance of any waterproofing process marketed by the respondents.

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

(c) Which shall be maintained by respondents for a period of three (3) years from the date such advertising or sales promotion material was last disseminated.

10. Using in any manner a sales plan, scheme or device wherein

false, misleading or deceptive statements or representations are made, directly or by implication, in order to obtain leads or prospects for the sale of, or to induce purchases of goods and services.

11. Representing, directly or by implication, orally, visually, or in writing that any price for the products or services sold by respondents is a special or reduced price unless respondents can affirmatively show that such price constitutes a significant reduction from the price at which respondents have sold such products and services for a reasonably substantial period of time in the recent regular course of their business.

12. Failing to maintain adequate records (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims is based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations can be determined.

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

(b) Failing to respond to customers' request for service within seven (7) days from the date of receipt thereof.

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

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

15. Failing to maintain and produce for inspection and copying, for a period of three (3) years, copies of all advertisements, brochures, sales contracts, salesmen's manuals and sales bulletins, and all other promotional material utilized in the advertising, promotion and sale of such products or services.

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

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

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

18. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information in statements:

NOTICE OF CANCELLATION

(enter date of transaction)

DATE

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE (3) BUSINESS DAYS FROM THE ABOVE DATE.

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

I HEREBY CANCEL THIS TRANSACTION.

(DATE)

(BUYER'S SIGNATURE)

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

20. Failing or refusing to honor any valid notice of cancellation by a buyer and within three (3) business days after the receipt of such notice, to (i) refund all payments made under the contract or sale, (ii)

cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale.

1. *It is further ordered, That:*

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

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

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

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

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

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

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

2. *It is further ordered, That* the respondent corporations shall

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

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

4. *It is further ordered,* That the individual respondents named herein 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.

5. *It is further ordered,* That in the event that the corporate respondents merge with another corporation or transfer all or a substantial part of their business or assets to any other corporation or to any other person, said respondents shall require such a 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 respondents wish to present to the Commission any reason why said order should not apply in its present form to said successor or transferee, they shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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

Complaint

89 F.T.C.

IN THE MATTER OF

G. & B. TEXTILES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS
LABELING ACTS*Docket C-2867. Complaint, Feb. 14, 1977 --- Decision, Feb. 14, 1977*

Consent order requiring a New York City importer and distributor of fabrics, among other things, to cease misrepresenting the fiber content of its wool products and to notify purchasers of these fabrics that government tests have shown them to be misbranded.

Appearances

For the Commission: *Abraham A. Karlin* and *Jerry R. McDonald*.
For the respondents: *Edward S. Wactler* and *Gerald Blumburg*,
Kuh, Shapiro, Goldman, Cooperman & Levitt, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that G. & B. Textiles, Inc., a corporation formerly known as H.M.S. International Fabrics, Inc., and Benjamin Solomon, individually and as an officer of said corporation, and Herbert and Michael Solomon, individually and as former officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 G. & B. Textiles, 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 45 West 45th St., New York, New York. It was formerly known as H.M.S. International Fabrics, Inc.

Respondent Benjamin Solomon is an officer and respondents Herbert Solomon and Michael Solomon are former officers of G. & B. Textiles, Inc. At all times relevant to the acts and practices hereinafter set forth, they formulated, directed and controlled the acts and practices of the corporate respondent. The business address of respondent Benjamin Solomon is the same as that of the corporate

respondent and that of respondents Herbert Solomon and Michael Solomon is 1290 Avenue of the Americas, New York, New York.

Respondents are engaged in the business of importing wool blend fabrics into the United States and selling such fabrics to their customers in the various states.

PAR. 2. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain wool blend fabrics stamped, tagged, labeled, or otherwise identified by respondents as "55% polyester, 45% reprocessed wool" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely wool blend fabrics, with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act, as amended.

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, as amended, and the Wool Products Labeling Act of 1939; 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 by Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding, and enters the following order:

1. Respondent G. & B. Textiles, 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 45 West 45th St., New York, New York.

Respondent Benjamin Solomon is an officer and respondents Herbert Solomon and Michael Solomon are former officers of said corporation. At all times relevant to the allegations in the complaint, they formulated, directed and controlled the policies, acts and practices of said corporation. The business address of Benjamin Solomon is 45 West 45th St., New York, New York and that of Herbert Solomon and Michael Solomon is 1290 Avenue of the Americas, New York, New York.

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

ORDER

It is ordered. That respondents G. & B. Textiles, Inc., a corporation, its successors and assigns, and its officers, and Benjamin Solomon, individually and as an officer of said corporation, and Herbert Solomon and Michael Solomon, individually and as former 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 introduction, or importing for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered. That respondents notify, by delivery of a copy of this order by registered mail, each of their customers that purchased the wool products which gave rise to this complaint of the fact that United States government tests have shown that such products were misbranded.

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

It is further ordered. That the individual respondents named herein promptly notify the Commission of each change in business or employment status, which includes discontinuance of their present business or employment and each affiliation with a new business or employment for ten (10) years following the effective date of this order. Such notice shall include respondents' current business address and a description of the business or employment in which they are engaged as well as a description of their duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

It is further ordered. That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of

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

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

Complaint

IN THE MATTER OF
UNCLE BEN'S, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2870. Complaint, Feb. 23, 1977 -- Decision, Feb. 23, 1977

Consent order requiring a Houston, Texas producer and distributor of food products, and its New York City advertising agency, among other things, to cease disseminating advertisements which depict or portray children coming close to foods in the process of being cooked, or attempting to cook foods themselves, without close adult supervision, or any other advertisements which may have the tendency to influence children to engage in behavior inconsistent with recognized safety practices.

Appearances

For the Commission: *Mark D. Gordon.*

For the respondents: *Rosenfeld, Sirowitz & Lawson, New York City, David Carlin, Hall, Dickler, Lawler, Kent & Howley, New York City and Lawrence G. Meyer, Patton, Boggs & Blow, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Uncle Ben's, Inc., a corporation, and Rosenfeld, Sirowitz & Lawson, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

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

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

PAR. 2. Respondent Uncle Ben's, 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 13000 Westheimer Road, Houston, Texas.

PAR. 3. Respondent Rosenfeld, Sirowitz & Lawson, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and with its office and

principal place of business located at 1370 Avenue of the Americas, New York, New York.

PAR. 4. Respondent Uncle Ben's, Inc. is now, and for all times relevant to this complaint has been engaged in the production, distribution, and sale of a variety of food products, including but not limited to "Uncle Ben's Converted Rice," a brand of rice (hereinafter referred to as Uncle Ben's Rice). Said product is a "food" as defined in the Federal Trade Commission Act.

PAR. 5. Respondent Rosenfeld, Sirowitz & Lawson, Inc. was for some time an advertising agency of Uncle Ben's, Inc. and has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of Uncle Ben's Rice.

PAR. 6. In the course and conduct of its aforesaid business, respondent Uncle Ben's, Inc. causes Uncle Ben's Rice in its product package to be transported from its place of business to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent Uncle Ben's, Inc. maintains and at all times mentioned herein has maintained, a substantial course of trade in said product in or affecting commerce. The volume of business in or affecting commerce has been and is substantial.

PAR. 7. In the course and conduct of their aforesaid businesses, respondents Uncle Ben's, Inc. and Rosenfeld, Sirowitz & Lawson, Inc. have disseminated, and caused the dissemination of, certain advertisements concerning the said product by various means in or affecting commerce including but not limited to, television advertisements broadcast by television stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product, and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in or affecting commerce.

PAR. 8. Typical and illustrative of the statements and representations made in respondents' advertisements disseminated by means of television, but not all inclusive thereof, is the following advertisement, attached hereto and made a part hereof as Appendix A.

PAR. 9. The aforesaid advertisement has the tendency or capacity to influence children to engage in the following behavior with respect to foods which are in the process of being cooked:

- (a) coming very close to foods or to containers of foods which are in the process of being cooked;
- (b) attempting to cook foods by themselves without close and watchful supervision.

Therefore, such advertisement has the tendency or capacity to induce behavior which is harmful or involves an unreasonable risk of harm, and was and is an unfair or deceptive act or practice.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Uncle Ben's, Inc. has been, and is now, in substantial competition, in or affecting commerce, with other corporations engaged in the manufacture and sale of food products.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Rosenfeld, Sirowitz & Lawson, Inc. has been, and is now in substantial competition in or affecting commerce with other advertising agencies.

PAR. 12. The aforesaid acts or practices of respondents, as herein alleged as aforesaid, 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 or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

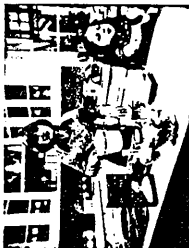
Complaint



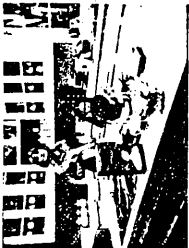
MOTHER: Slimer 20 minutes. Then
I'll be asking
myself.
Perfect every time.



MOTHER TO CHILD: Sure. Watch
the Uncle Ben's.



...during the last few minutes
you don't have to watch the pot.
CHILD: Can I help?



MOTHER TO AUDIENCE: Now that
Uncle Ben's is foolproof...



You don't have to watch the pot.

UNCLE BEN'S Converted
RICE. No cooking,
and you don't have to watch the
pot.



...so why not try it?
CHILD: I cooked it all by myself.



UNCLE BEN'S is foolproof...



MOTHER: Maybe you're using
Uncle Ben's because you're afraid
of cooking rice.

Appendix: A

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 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Uncle Ben's, 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 13000 Westheimer Road, Houston, Texas.

2. Respondent Rosenfeld, Sirowitz & Lawson, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and with its office and principal place of business located at 1370 Avenue of the Americas, New York, New York.

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

ORDER

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

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

2. The term "food" means any article used for food or drink for man or other animals.
3. The term "cooking" shall mean a process of food preparation which includes the application of heat.
4. The term "child" shall mean a person who appears to be or in fact is under the age of 12.

I

It is ordered. That the respondents Uncle Ben's, Inc., a corporation, and Rosenfeld, Sirowitz & Lawson, Inc., a corporation, (hereinafter referred to as respondents), their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or distribution in or affecting commerce of any product, forthwith cease and desist from, directly or indirectly:

A. Representing, through depictions, descriptions, or otherwise, children closely examining, or closely approaching foods or containers of foods which are in the process of being cooked.

B. Representing, through depictions, descriptions, or otherwise, children participating in the process of cooking without close supervision of an adult.

C. Representing, through depictions, descriptions, or otherwise, children initiating participation with persons who are in the process of cooking by touching a utensil, glove, pot or other object that is being used in the process of cooking without first having received permission from an adult.

D. Representing, through depictions, descriptions, or otherwise, children without close adult supervision in a kitchen or other area where foods are in the process of being cooked, provided that this subparagraph D shall not prohibit depiction of children eating foods or children engaging in other behavior not likely to affect the cooking process in the presence of adults who are attending to the process of cooking foods.

E. Representing, through depictions, descriptions, or otherwise, children engaging in the activity in a kitchen or in an area where foods are in the process of being cooked where it is reasonably foreseeable, through reasonable inquiry, that such representation has the tendency or capacity to influence children to engage in behavior which creates an unreasonable risk of harm to themselves or to others.

131

Decision and Order

II

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change 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 respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Order

89 F.T.C.

IN THE MATTER OF
GENESCO INCORPORATED

Docket 9019. Interlocutory Order, Feb. 24, 1977

Parties to file brief memoranda in seven days as to whether they object to matter being withdrawn from adjudication while Commission considers their proposed order; respondent to advise whether it concurs in counsel supporting complaint's recommendation for adoption of administrative law judge's findings of fact, conclusions of law and order as modified by the parties.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder and John F. LeFevre.*

For the respondent: *Sanford M. Litvack, Donovan, Leisure, Newton & Irvine, New York City.*

ORDER

On February 18, 1977, the Commission issued an order granting the parties' joint motion that their notices of intention to appeal from the initial decision be withdrawn and that further proceedings be stayed pending consideration by the Commission of the parties' proposed order. The Commission further indicated that the matter will not be withdrawn from adjudication unless and until the Commission so orders.

The Commission requests the parties to file brief memoranda, not later than seven days after the date of this order, indicating whether they object to this matter being withdrawn from adjudication while the Commission considers their proposed order.¹ In addition, respondent is requested to advise whether it concurs in complaint counsel's recommendation "that the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order as modified by the parties."²

It is so ordered.

¹ If the case were withdrawn from adjudication, the Commission would be permitted to receive advice concerning the proposed order without regard to the requirements of Section 4.7 of the Rules of Practice.

² Motion to Support Withdrawal of Notices of Appeal, p. 3.

IN THE MATTER OF
BIC PEN CORPORATION, ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9095. Complaint, Feb. 9, 1977 — Final Order, Mar. 1, 1977

Order dismissing a complaint issued against a Milford, Conn., manufacturer and seller of disposable butane lighters, pantyhose, and disposable shavers and a New York City manufacturer and seller of cigarettes, beer, and razors and blades, alleging violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was dismissed as moot upon the termination of the proposed acquisition of American Safety Razor Division of Philip Morris, Inc. by BIC Pen Corporation.

Appearances

For the Commission: *Roger J. Leifer.*

For the respondents: *Neal Pollio, Phillip, Nizer, Benjamin, Krim & Ballan, New York City; Donald Fried, Arnold & Porter, New York City and Abe Krash, Arnold & Porter, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the BIC Pen Corporation, a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire the assets and business of the American Safety Razor Division of Philip Morris Incorporated, a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and which acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. BIC PEN CORPORATION

1. Respondent, BIC Pen Corporation, (hereinafter "BIC") is a New York corporation with its principal office and place of business located at Wiley St., Milford, Connecticut.
2. BIC is a publicly held corporation listed on the American Stock Exchange. BIC is a subsidiary of Societe BIC, S.A., a publicly held

French corporation. Societe BIC holds voting trust certificates which represent 57 percent of the outstanding common shares of BIC. Marcel Bich, a trustee of the voting trust is the only individual who may vote the shares of the trust.

3. BIC is a manufacturer and seller of writing instruments, disposable butane lighters, pantyhose and disposable shavers. In 1976 BIC was the largest seller of writing instruments, and a leading seller of disposable butane lighters in the United States with sales of over \$100 million.

4. At all times relevant herein, BIC has sold or shipped products in interstate commerce and was a corporation engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

II. PHILIP MORRIS INCORPORATED

5. Respondent, Philip Morris Incorporated (hereinafter "Philip Morris") is a Virginia corporation with its principal office and place of business located at 100 Park Avenue, New York, New York.

6. In 1976, Philip Morris had sales of approximately \$4.3 billion, operating income of \$600 million, and assets of \$3.5 billion.

7. Philip Morris is a diversified company engaged in the manufacture and sale of cigarettes, beer, razors and blades. It is the 74th largest industrial company in the United States. It states that it is the second largest of the six major cigarette manufacturers in the United States, and is the second largest publicly-held cigarette company in the world. Philip Morris' subsidiary, Miller Brewing Company, is the third largest United States brewer.

8. The American Safety Razor Division (hereinafter "ASR") of Philip Morris is the third largest domestic manufacturer of razors and blades and the largest private label razor blade manufacturer in the United States.

9. In 1976, ASR's sales were \$42.3 million and its income before taxes was \$1.5 million. Its sales of razors and blades domestically were \$29.5 million.

10. ASR manufactures the "Personna" "Gem" and "Flicker" lines of razors and blades, and manufactures industrial and surgical blades.

11. At all times relevant herein, Philip Morris has sold or shipped products in interstate commerce and was a corporation engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affected commerce

within the meaning of the Federal Trade Commission Act, as amended.

III. THE PROPOSED ACQUISITION

12. On December 30, 1976 BIC and Philip Morris entered into an agreement for BIC to purchase the business and substantially all the assets of the ASR Division for approximately \$20 million.

IV. TRADE AND COMMERCE

13. The relevant geographic market is the United States as a whole.

14. The relevant product market is the production and sale of razors and razor blades used in "wet-shaving."

15. In 1975, approximately 1.8 billion razor blades were sold in the United States at retail. The retail price of razors and razor blades sales was approximately \$385 million and the value of factory shipments was \$250 million.

16. Concentration in the production and sale of razors and blades is extremely high with the top four firms accounting for approximately 98.5 percent of total U.S. retail and wholesale sales in 1976.

17. Barriers to entry into the production and sale of razors and blades are substantial.

V. ACTUAL COMPETITION

18. In 1976 ASR was the third largest producer and seller of razors and razor blades in the United States with approximately 11 percent of wholesale shipments.

19. In July, 1976, BIC began to sell its disposable razor (the "BIC Shaver") in the North Central Region of the United States. In this limited geographic area and time period, BIC sold over 32 million BIC Shavers with factory value of \$3.2 million. This amount accounted for approximately 2.4 percent of industry wholesale sales in the United States in the second half of 1976. In 1977, BIC commenced selling the BIC Shaver nationwide.

20. BIC and ASR are direct and substantial competitors in the production and sale of razors and blades in the United States. The acquisition of ASR by BIC will eliminate substantial actual competition.

VI. POTENTIAL COMPETITION

21. BIC is a significant potential competitor in the production and sale of razors and blades by reason of, among others, its being an

aggressive competitor in other products and markets, and its stated intent, aggressive actions, size, financial resources, and marketing, manufacturing and technical capabilities.

22. The BIC Shaver, which was introduced in Greece in late 1974, has captured approximately 40 percent of the razor blade market there. More recent introductions of the BIC Shaver have captured 15 to 20 percent of the market in Italy and Austria, and 10 to 15 percent of the market in France and Belgium.

23. Acquisition of ASR by BIC will preclude ASR from expanding into the disposable razor field which would make ASR a stronger competitor in the market.

24. BIC is the most likely competitor on a significant scale in the production and sale of razors and blades and is the only reasonably foreseeable company which can develop into an actual competitive force capable of offering significant competition to the four major domestic razor blade companies.

25. Manufacturers of razors and razor blades have perceived BIC to be a likely future significant competitive force on the fringe of the market and have modified their behavior in a pro-competitive manner in anticipation of BIC's entry.

VII. EFFECTS OF THE ACQUISITION

26. The effects of the acquisition of ASR by BIC may be substantially to lessen competition in the production and sale of razor blades throughout the United States in violation of Section 7 of the Clayton Act, as amended, and the effects of the acquisition may be unreasonably to restrain trade and to hinder competition unduly in the production and sale of razors and razor blades thereby constituting an unfair method of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways among others:

(a) Actual competition between BIC and ASR in the production and sale of razors and blades will be eliminated.

(b) The substantial likelihood of reduced future concentration in the razors and blades market through the continued strength of ASR as a significant competitor in that market will be diminished or eliminated.

(c) Significant potential competition between BIC and producers of razors and blades, including ASR, will be eliminated.

VIII. VIOLATIONS CHARGED

27. The agreement for the acquisition of ASR by BIC constitutes a

violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and the acquisition by BIC of ASR, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and constitute a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE
LAW JUDGE

FEBRUARY 25, 1977

[1] A "Joint Motion To Dismiss Complaint," which was filed on February 25, 1977, recites in paragraph 6 that respondents have terminated the acquisition agreement which is the subject of the complaint in this proceeding.

They have so informed the United States District Court for the Southern District of New York where a temporary restraining order and preliminary injunction were being sought in order to hold separate the assets to be acquired and have requested the Court to dismiss that matter.

[2] In view of the foregoing, the Commission's proceeding has become moot. Accordingly, and pursuant to Commission Rules 3.22(e), 3.42(c) and 3.51,

It is ordered, That the complaint in this matter be, and it is hereby, dismissed.

FINAL ORDER

On February 25, 1977, the parties filed a joint motion with the administrative law judge requesting that he issue an Order and Initial Decision dismissing the complaint on grounds of mootness, the proposed acquisition which is the subject of the complaint having been abandoned. The same day, the ALJ issued his Initial Decision and Order dismissing the complaint as moot.

The parties have now filed a joint motion requesting that the Commission expeditiously enter a Final Decision in this matter dismissing the complaint. Upon consideration of the latter motion,

It is ordered, That the complaint in this matter be, and it hereby is, dismissed.

IN THE MATTER OF
THE AMERICAN COLLEGE OF RADIOLOGY

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

Docket C-2871. Complaint, Mar. 1, 1977 — Decision, Mar. 1, 1977

Consent order requiring a Chicago, Ill., medical association, among other things, to cease developing, publishing and circulating relative value scales which tend to establish prices or otherwise influence fees for medical and surgical procedures and services. Additionally, respondent is required to withdraw relative value scales already published and to send copies of the complaint and order to all recipients of this data requesting the return of all copies of the material.

Appearances

For the Commission: *Lawrence E. Gray* and *Judith A. Moreland*.
For the respondent: *James M. Nicholson, Nicholson & Carter*,
Washington, D.C. and *Paul G. Gebhard, Vedder, Price, Kaufman & Kammholz*, Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The American College of Radiology has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent, The American College of Radiology ("ACR"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 20 North Wacker Drive, Chicago, Ill.

PAR. 2. ACR has approximately 12,000 members and fellows who are elected from the ranks of those physicians who have been certified in radiology or one of its Board-recognized branches by the American Board of Radiology or the Royal College of Physicians and Surgeons of Canada, those physicists who have been certified in physics by the American Board of Radiology or the Royal College of Physicians and Surgeons of Canada, and those physicians engaged in nuclear medicine who have been certified as specialists in that practice by the appropriate specialty board which is a member of

either the American Board of Medical Specialties or its Canadian equivalent. Such members and fellows elect a majority of the Board of Chancellors which manages the affairs of ACR.

PAR. 3. Radiologists are licensed physicians who specialize in the use of X-ray, radium and other radioactive substances, and/or in the use of nuclear medicine and ultrasound and related procedures in the diagnosis and treatment of disease and other physical conditions. Nuclear physicians specialize in the use of nuclear medicine and related procedures in the diagnosis and treatment of disease and other physical conditions. Radiologists and nuclear physicians are generally engaged in the private practice of medicine and derive substantial portions of their professional income from fees for medical services charged to patients or to insurers.

PAR. 4. The acts and practices of ACR are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Since 1958, ACR has, on various occasions, prepared, published, and circulated to its members and fellows and others "relative value scales" which set forth in non-monetary units comparative numerical values for procedures and services performed by radiologists and nuclear physicians. Each value is convertible into a monetary fee by the application of a dollar conversion factor to the basic unit.

PAR. 6. The preparation, publication, and circulation by ACR of relative value scales have the effect of establishing, maintaining, or otherwise influencing the fees which radiologists and nuclear physicians charge for their professional services and are in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 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 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 considered the agreement and having provisionally accepted same and placed it on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of the Commission's Rules, now in further conformity with the procedure provided by Section 2.34 of its Rules hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following findings and order:

1. Respondent, The American College of Radiology ("ACR"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal offices located at 20 North Wacker Drive, Chicago, Ill.

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

ORDER

I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "ACR" means the American College of Radiology.

C. The term "effective date of this order" means the date of service of this order.

II

It is ordered, That ACR, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s);

B. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to the whole or any part of any proposed or existing relative value scale(s); *Provided, however*, that nothing contained herein shall prohibit ACR from furnishing testimony to any government body, committee, or instrumentality, or

from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for radiological or nuclear medicine services or procedures, it shall be limited to historical data, free of editing or interpretation, and shall be completely described as to methodology;

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its fellows and members and to each of the third party payers and others listed in Appendix "B" to this order, instructing such fellows and members and third party payers and others to return to ACR all copies of ACR relative value scales in their possession.

III

It is further ordered, That ACR shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

IV

It is further ordered, That ACR shall, within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

V

Nothing in this order shall be construed to exempt The American College of Radiology from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

APPENDIX A

(ACR LETTERHEAD)

TO: Recipients of ACR Relative Value Studies

Decision and Order

89 F.T.C.

As you may be aware, the FTC has been investigating various components of health care, including relative value scale activities of ACR. The Board of Chancellors of the College no longer desires to continue such activities and has discontinued them. It has entered into an agreement with the Federal Trade Commission to formalize the discontinuance of its relative value scales.

This agreement resulted in the issuance by the Federal Trade Commission on March 1, 1977 of a complaint and the entry of a consent order which requires, in essence, that ACR:

- (a) stop publishing and participating in the development of relative value scales;
- (b) withdraw the relative value scales it has already published;
- (c) distribute a copy of the complaint and consent order to every ACR relative value scale recipient; and
- (d) instruct all recipients of ACR's relative value scales to return them to ACR.

The complaint alleges basically that ACR's relative value scales have the effect of influencing fees charged by radiologists and nuclear physicians. The consent agreement with the FTC states that it is for settlement purposes only and does not constitute an admission by the College of the charges in the complaint or that the law has been violated.

In accordance with the provisions of the FTC's order, you are to cease using and to return all copies of any College relative value scale in your possession.

The proper mailing address is:

The American College of Radiology
20 North Wacker Drive
Chicago, Illinois 60606
Attention:

Copies of the FTC's complaint and order are enclosed.

Sincerely,

President

APPENDIX B

Commissioner
Medical Services Administration
Social and Rehabilitation Service
Department of Health, Education, and
Welfare
330 C Street, S.W.
Washington, DC 20201

Commissioner of Social Security
Department of Health, Education,
and Welfare
6401 Security Boulevard
Baltimore, MD 21235

Deputy Assistant Secretary for
Health Resources and Programs
Department of Defense
Washington, DC 20301

Directorate
OCHAMPUS
Department of Defense
Washington, DC 20301

National Association of
Blue Shield Plans
211 East Chicago Avenue
Chicago, IL 60611

Health Application Systems
1633 Bayshore Highway
Burlingame, CA 94010

Blue Cross and Blue Shield
of Alabama
930 S. 20th Street
Birmingham, AL 35298

Blue Cross of Arizona, Inc.
321 W. Indian School Road
Box 13466
Phoenix, AZ 85002

Arizona Blue Shield Medical
Service
321 W. Indian School Road
Box 13466
Phoenix, AZ 85002

Arkansas Blue Cross and Blue
Shield, Inc.
601 Gaines Street
Box 2181
Little Rock, AR 72203

Connecticut Medical Service, Inc
221 Whitney Avenue
New Haven, CT 06509

Blue Cross and Blue Shield of
Delaware, Inc.
201 W. 14th Street
Box 1991
Wilmington, DE 19899

Group Hospitalization, Inc. BC
550 12th Street, S.W.
Washington, DC 20024

Medical Service of the District of Colum-
bia BS
550 12th Street, S.W.
Washington, DC 20024

OCHAMPUS
Department of Defense
Denver, CO 80240

Blue Cross of Southern California
Box 27747
4777 Sunset Boulevard
Los Angeles, CA 90027

Blue Cross of Northern California
1950 Franklin Street
Oakland, CA 94659

Blue Shield of California
2 North Point
San Francisco, CA 94113

Colorado Hospital Service - BC
244 University Boulevard
Denver, CO 80206

Colorado Medical Service, Inc. BS
244 University Boulevard
Denver, CO 80206

Connecticut Blue Cross, Inc.
Box 504
370 Bassett Road
North Haven, CT 06473

Hawaii Medical Service Association
1504 Kapiolani Boulevard
Box 860
Honolulu, HI 96808 BS

Blue Cross of Idaho, Inc.
1501 Federal Way
Box 7408
Boise, ID 83707

North Idaho District Medical Service
Bureau, Inc. BS
1602 21st Avenue
Box 1106
Lewiston, ID 83501

Decision and Order

89 F.T.C.

Blue Cross of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Illinois Hospital and Health BC Service Inc. 227 N. Wyman Street Rockford, IL 61101
Blue Shield of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Hospital Service Corporation BC 233 North Michigan Avenue Box 1364 Chicago, IL 60601
Blue Cross of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Illinois Medical Service - BS 233 North Michigan Avenue Chicago, IL 60601
Blue Cross of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Indiana 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Mutual Medical Insurance Inc. BS 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Iowa Liberty Building Sixth Street & Grand Avenue Des Moines, IA 50307
Blue Shield of Iowa Liberty Building Des Moines, IA 50307	Blue Cross of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Hospital Service Association, Inc. 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Shield of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Blue Shield 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Cross and Blue Shield of Minnesota 3535 Blue Cross Road Box 3560 St. Paul, MN 55165
Blue Cross Hospital Plan Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Minnesota 2344 Nicollet Avenue Minneapolis, MN 55404

Kentucky Physicians' Mutual,
Inc.
3101 Bardstown Road
Louisville, KY 40205

Blue Cross of Louisiana
10225 Florida Boulevard
Box 15699
Baton Rouge, LA 70815

Hospital Service Association of
New Orleans-BC
2026 St. Charles Avenue
New Orleans, LA 70130

Maine Blue Cross and Blue Shield
110 Free Street
Portland, ME 04101

Blue Cross of Maryland
700 E. Joppa Road
Box 9836
Towson, MD 21204

Blue Shield of Maryland, Inc.
700 E. Joppa Road
Towson, MD 21204

Blue Cross of Massachusetts
133 Federal Street
Boston, MA 02106

Blue Cross and Blue Shield of
South Carolina
I-20 East at Alpine Road
Columbia, SC 29219

Blue Cross of Western Iowa and South
Dakota
Third & Pierce Streets
Box 1677
Sioux City, IO 51102

South Dakota Medical Service,
Inc.
711 N. Lake Avenue
Sioux Falls, SD 57104

Blue Cross-Blue Shield of Tennessee
801 Pine Street
Chattanooga, TN 37402

Blue Cross and Blue Shield of Mississippi,
Inc.
530 E. Woodrow Wilson Drive
Box 1043
Jackson, MS 39205

Blue Cross of Kansas City
3637 Broadway
Box 169
Kansas City, MO 64141

Blue Cross Hospital Service, Inc. of Mis-
souri
1430 Olive Street
St. Louis, MO 63103

Blue Shield of Kansas City
3637 Broadway
Box 169
Kansas City, MO 64141

St. Louis Blue Shield
5775 Campus Parkway
Hazelwood, MO 63042

Blue Cross of Montana
3360 10th Avenue S.
Great Falls, MT 59405

Montana Physicians' Service - BS
404 Fuller Avenue
Box 1677
Helena, MT 59601

Blue Cross of Virginia
2015 Staples Mill Road
Box 27401
Richmond, VA 23279

Blue Cross of Southwestern Virginia
1212 Third Street, S.W.
Box 2770
Roanoke, VA 24001

Blue Shield of Virginia
2015 Staples Mill Road
Box 27401
Richmond, VA 23279

Blue Shield of Southwestern Virginia
1212 Third Street, S.W.
Box 2770
Roanoke, VA 24001

Kitsap Physicians' Service
820 Pacific Avenue
Box 339
Bremerton, WA 98310

Blue Cross Hospital Service,
Inc.
Commerce Square
Box 1343
Charleston, WV 23225

West Virginia Hospital Service,
Inc.
20th & Chapline Streets
Wheeling, WV 26003

Blue Shield of Southern West
Virginia, Inc.
Commerce Square
Box 1353
Charleston, WV 23235

Morgantown Medical-Surgical Service,
Inc.
265 High Street
Morgantown, WV 26505

West Virginia Medical Service
Inc.
20th & Chapline Streets
Box 6246
Wheeling, WV 26003

Associated Hospital Service, Inc.
4115 N. Teutonia Avenue
Box 2025
Milwaukee, WI 53201

Wisconsin Physicians' Service
330 E. Lakeside Street
Box 1109
Madison, WI 53701

Surgical Care, The Blue Shield
Plan of the Medical Society
of Milwaukee County
756 N. Milwaukee Street
Milwaukee, WI 53202

Blue Cross of Wyoming

Associated Hospitals, Inc.
401 Federal Street
Box 131
Bluefield, WV 24701

Parkersburg Hospital Service, Inc.
203 Union Trust Building
Box 1948
Parkersburg, WV 26101

Surgical Service, Inc.
Commercial Bank Building
Box 131
Bluefield, WV 24701

Medical-Surgical Service, Inc.
Union National Bank Building
Clarksburg, WV 26301

Memphis Hospital Service and Surgical
Association, Inc.
85 N. Danny Thomas Boulevard
Box 98
Memphis, TN 38101

Group Hospital Service, Inc.
Main at N. Central Expressway
Dallas, TX 75201

Group Life and Health Insurance Co.
Main at N. Central Expressway
Dallas, TX 75201

Blue Cross of Utah
2455 Parley's Way
Box 270
Salt Lake City, UT 84110

Blue Shield of Utah
2455 Parley's Way
Box 270
Salt Lake City, UT 84110

Blue Shield of Wyoming

144

Decision and Order

4020 House Avenue
Box 2266
Cheyenne, WY 82001

Genesee Valley Medical Care, Inc.
41 Chestnut Street
Rochester, NY 14647

Blue Shield of Central New York, Inc.
344 S. Warren Street
Syracuse, NY 13202

Medical and Surgical Care, Inc.
5 Hopper Street
Utica, NY 13501

Blue Cross and Blue Shield of
North Carolina
P. O. Box 2291
1830 Chapel Hill-Durham Blvd.
Durham, NC 27702

Blue Cross of North Dakota
301 S. Eighth Street
Fargo, ND 58102

Blue Shield of North Dakota
301 S. Eighth Street
Fargo, ND 58102

Blue Cross Hospital Plan, Inc.
201 Ninth Street, N.W.
Canton, OH 44702

Blue Cross of Southwest Ohio
1351 William Howard Taft Rd.
Cincinnati, OH 45206

Blue Cross of Northeast Ohio
2066 E. Ninth Street
Cleveland, OH 44115

Blue Cross of Central Ohio
174 E. Long Street
Columbus, OH 43215

Blue Cross of Lima, Ohio
7 Public Square

4020 House Avenue
Box 2266
Cheyenne, WY 82001

Medical Mutual of Cleveland,
Inc.
2060 E. Ninth Street
Cleveland, OH 41115

Ohio Medical Indemnity, Inc
6740 N. High Street
Worthington, OH 43085

Blue Cross and Blue Shield of Oklahoma
1215 S. Boulder Avenue
Box 3283
Tulsa, OK 74102

Blue Cross of Oregon
100 S.W. Market Street
Box 1271
Portland, OR 97207

Oregon Physicians' Service
619 S.W. 11th Avenue
Box 1071
Portland, OR 97207

Blue Cross of Lehigh Valley
1221 Hamilton Street
Allentown, PA 18102

Capital Blue Cross
100 Pine Street
Harrisburg, PA 17101

Blue Cross of Greater
Philadelphia
1333 Chestnut Street
Philadelphia, PA 19107

Blue Cross of Western
Pennsylvania
1 Smithfield Street
Pittsburg PA 15222

Blue Cross of Northeastern
Pennsylvania
15 S. Franklin Street
Wilkes-Barre, PA 18701

Pennsylvania Blue Shield
Blue Shield Building

Decision and Order

89 F.T.C.

Box 1046
Lima, OH 45802

Camp Hill, PA 17011

Blue Cross of Northwest Ohio,
Inc.
3737 Sylvania Avenue
Box 943
Toledo, OH 43656

Blue Cross and Blue Shield of Rhode
Island
Box 1298
444 Westminster Mall
Providence, RI 02901

Blue Cross of Nebraska
Box 3248
Main P.O. Station
Omaha, NB 68103

Chautauqua Region Hospital
Service Corporation
306 Spring Street
Box 1119
Jamestown, NY 14701

Blue Shield of Nebraska
Box 3248
Main P.O. Station
Omaha, NB 68103

Associated Hospital Service
of New York
622 Third Avenue
New York, NY 10017

Nevada Blue Shield
3660 Baker Lane
Reno, NV 89502

Rochester Hospital Service
Corporation
41 Chestnut Street
Rochester, NY 14647

New Hampshire-Vermont Hospitaliza-
tion Service - BC
2 Pillsbury Street
Concord, NH 03301

Blue Cross of Central New York, Inc.
344 S. Warren Street
Box 271
Syracuse, NY 13201

New Hampshire-Vermont
Physicians' Service
2 Pillsbury Street
Concord, NH 03301

Hospital Plan, Inc.
5 Hopper Street
Utica, NY 13501

Hospital Service Plan of New Jersey - BC
33 Washington Street
Box 420
Newark, NJ 07101

Hospital Service Corporation of Jefferson
County
158 Stone Street
Watertown, NY 13601

Medical-Surgical Plan of New Jersey - BS
33 Washington Street
Newark, NJ 07102

Blue Shield of Northeastern New York,
Inc.
Box 8650
Albany, NY 12208

New Mexico Blue Cross and Blue Shield,
Inc.
12800 Indian School Road N.E.
Albuquerque, NM 87112

Blue Shield of Western New York, Inc.
298 Main Street
Buffalo, NY 14202

Blue Cross of Northeastern New York,
Inc.

Chautauqua Region Medical Service, Inc.

1251 New Scotland Road
Box 8650
Albany, NY 12208

306 Spring Street
Jamestown, NY 14701

Blue Cross of Western New York,
Inc.
298 Main Street
Buffalo, NY 14202

United Medical Service, Inc.
2 Park Avenue
New York, NY 10016

Blue Cross of Washington-
Alaska, Inc.
15700 Dayton Avenue, North
Seattle, WA 98133

California Physicians' Service
P. O. Box 7608
San Francisco, CA 94120

The Indiana State Medical
Association
3935 North Meridian Street
Indianapolis, IN 46208

Colorado Medical Service, Inc.
244 University Blvd.
Denver, CO 80206

Continental Service Life & Health Insur-
ance Company
Box 3397
5353 Florida Boulevard
Baton Rouge, LA 70821

Connecticut General Life Insurance
Company
Hartford, CT 06115

Blue Cross & Blue Shield of
Greater New York
622 3rd Avenue
New York, NY 10016

Medical Association of Georgia
938 Peachtree Street, N.E.
Atlanta, GA 30309

Missouri Medical Service
5775 Campus Parkway
Hazelwood, MO 63042

Mississippi State Medical
Association
735 Riverside Drive
Jackson, MS 39216

Washington Physicians' Service
220 West Harrison Street
Seattle, WA 98119

Medical-Surgical Care, Inc.
203 Union Trust Building
Box 1948
Parkersburg, WV 26101

New York Life Insurance Company
51 Madison Avenue
New York, NY 10010

Metropolitan Life Insurance
Company
1 Madison Avenue
New York, NY 10010

Prudential Insurance Company
of America
Prudential Plaza
Newark, NJ 07101

The Travelers Insurance Company
1 Tower Square
Hartford, CT 06115

Continental Assurance Company
CNA Plaza
Chicago, IL 60605

Aetna Life Insurance Company
151 Farmington Avenue
Hartford, CT 06115

Decision and Order

89 F.T.C.

Bankers Life Company
711 High Street
Des Moines, IA 50307

Employers Life Insurance
Company of Wausau
2000 Westwood Drive
Wausau, WI 54401

Nationwide Life Insurance Company
246 North High Street
Columbus, OH 43216

Colonial Penn Life Insurance Company
5 Penn Center Plaza
Philadelphia, PA 19103

Equitable Life Assurance
Society of the U.S.
1285 Avenue of the Americas
New York, NY 10019

Firemen's Fund Insurance Company
3333 California Street
San Francisco, CA 94118

Reliance Insurance Group
4 Penn Center Plaza
Philadelphia, PA 19103

Zurich Life Insurance Company
111 West Jackson Boulevard
Chicago, IL 60604

Occidental Life Insurance Company of
California
Box 2101 Terminal Annex
Los Angeles, CA 90054

Mutual of Omaha Insurance Company
Dodge at 33rd Street
Omaha, NE 68131

Blue Shield of Massachusetts,
Inc.
133 Federal Street
Boston, MA 02106

Blue Cross of Eastern Ohio, Inc.
2400 Market Street
Youngstown, OH 44507

Nevada State Medical Association
3660 Baker Lane
Reno, NV 89502

IN THE MATTER OF
MATSUSHITA ELECTRIC CORPORATION OF AMERICA
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9048. Complaint, July 22, 1975 — Decision, Mar. 4, 1977

Consent order requiring a Secaucus, N.J., manufacturer of bicycles, television and audio equipment, and major home appliances, among other things, to cease falsely or misleadingly referring to, or misrepresenting the results of tests, surveys and studies to support superiority claims for its consumer products.

Appearances

For the Commission: *Melvin H. Orlans* and *Cynthia L. Ingersoll*.
For the respondent: *Weil, Gotshal & Manges*, New York City and
Seth Waller and *James Katz*, in-house counsel.

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 Matsushita Electric Corporation of America, a corporation, 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 Matsushita Electric Corporation of America 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 1 Panasonic Way, Secaucus, New Jersey.

PAR. 2. Respondent is now and for some time has been engaged in the offering for sale, sale, and advertising of various consumer products, including color television receivers, which when sold are shipped to purchasers located in the various States of the United States. Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said consumer products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent at all times mentioned herein has been, and now is, in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of consumer products of the same general kind and nature as those offered for sale, sold and advertised by respondent.

* Reported as modified by Commission order dated June 8, 1977.

PAR. 4. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements concerning the aforementioned products, including color television receivers, in or affecting commerce by means of advertisements printed in magazines and newspapers distributed by the mail and across state lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products, including color television receivers.

PAR. 5. Among the advertisements disseminated or caused to be disseminated by respondent is the advertisement attached as Exhibit A, which includes the following statements and representations:

In fact, the National Electronics Association rated the Quatrecolor CT-701 as the easiest to service of all color televisions they tested in plant through June 1973.

PAR. 6. Through the aforesaid advertisement, respondent has represented directly or by implication that:

1. The test(s) conducted by the National Electronics Association ("NEA") in plant through June 1973 established that the Panasonic Quatrecolor CT-701 was the easiest to service of all color televisions tested.

2. The test(s) conducted by NEA in plant through June 1973 established that the Panasonic Quatrecolor CT-701 was the least expensive or least time-consuming to service of all color televisions tested.

3. A broad sample of major or well-known brands of color television sets was tested in plant by NEA through June 1973.

PAR. 7. In truth and in fact:

1. The test(s) conducted by NEA did not, in fact, establish that the Panasonic Quatrecolor CT-701 was the easiest to service of all color televisions tested in plant by NEA through June 1973.

2. The test(s) conducted by NEA did not, in fact, establish that the Panasonic Quatrecolor CT-701 was the least expensive or least time-consuming to service of all color televisions tested in plant by NEA through June 1973.

3. A broad sample of major or well-known brands of color television sets was not tested in plant by NEA through June 1973.

Therefore, the statements and representations contained in Exhibit A, as set forth in Paragraphs Five and Six, were and are false, misleading and deceptive.

PAR. 8. The use by the respondent 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 mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

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

4 cold, calculated reasons to buy Quatecolor™

Choosing a color TV is no spur-of-the-moment decision. You need some pretty strong reasons to pick one set over another.

Like the Quatecolor™ modular chassis that makes servicing quick and easy. Because 75% of all our circuitry is built onto 5 circuit boards.

In fact, the National Electronics Association rated the Quatecolor CT-701 as the easiest to service of all color televisions they tested in plant through June 1973.

Of course, we want those service calls to be few and far between. So we engineer every Quatecolor set with 100% solid-

state circuitry. To run cooler and last longer. Because the only tube is the picture tube.

And what a picture tube. We call it *Pana-Matrix™*. It surrounds each color dot with a black background. So you get bright, vivid colors. And a sharp picture.

And you don't have to worry about drops or surges in voltage ruining the picture. Because Quatecolor has a special automatic voltage regulator circuit with SCR (Silicon Control Rectifier) that maintains the correct voltage level.

You won't have to fiddle with a bunch of knobs to keep the

picture beautiful, either. Because Panasonic gives you *Q-Lock*. One button that electronically controls color, tint, contrast and brightness.

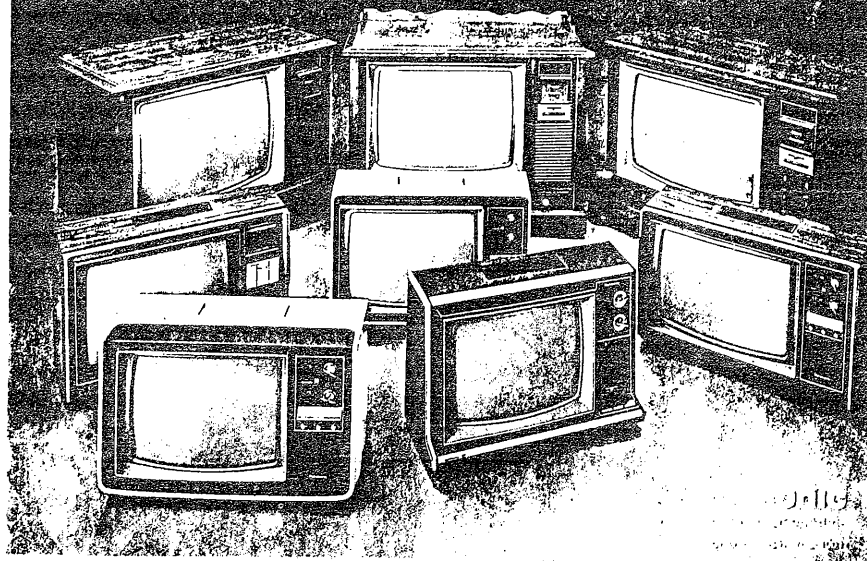
And *Q-Lock's* active color and tint circuits automatically seek out and maintain the best color picture. Even when you change channels, or atmospheric conditions affect the signal.

Quatecolor. From 17" portables up to 25" consoles (measured diagonally).

After all we put into them, you owe it to yourself to go see the picture that comes out of them.



and 8 more that just look nice.



DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Matsushita Electric Corporation of America with violating 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 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 or that any of the facts are true as alleged in the said complaint of the Commission issued in this proceeding, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter 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 makes the following jurisdictional findings and enters the following order:

1. Respondent Matsushita Electric Corporation of America 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 1 Panasonic Way, Secaucus, New Jersey.

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

ORDER

It is ordered, That respondent, Matsushita Electric Corporation of America, a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, division, or other device, in connection with the advertising, offering for sale, distribution, or sale of video and audio equipment, major home appliances, and bicycles to consumers for personal, family, or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. By any reference to a test or the results thereof, representing, directly or by implication, that any such product is superior to any other product in any respect unless:

(a) such test is appropriately designed and conducted for the

comparative evaluation of the characteristic or attribute about which the specific representation is made;

(b) the results of such test establish the comparative superiority represented;

(c) such test establishes, to a degree significant to consumers, that such product is superior to each compared product in the characteristic or attribute about which the specific representation is made; and

(d) such test is based upon a broad sample of the major or well-known brands of such product, except when the brands involved in the test are named.

2. Representing, directly or by implication, that any television receiver is easier to service than any other television receiver when respondent knows or should know that the television receiver is in fact more costly or more time consuming to service than such other television receiver.

3. Misrepresenting in any manner, directly or by implication, the results of conclusions of any test, survey, evaluation, report, study, research, or analysis of a television receiver.

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

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order. In addition, respondent shall, for a period of three (3) years at one (1) year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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

IN THE MATTER OF
WALTER SWITZER, INC., T/A SWITZER'S, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS
LABELING ACTS

Docket C-2872. Complaint, Mar. 4, 1977 — Decision, Mar. 4, 1977

Consent order requiring a Phoenix, Arizona, retailer of women's wearing apparel, including furs and fur products, among other things, to cease violating the labeling, invoicing, and advertising provisions of the Fur Products Labeling Act.

Appearances

For the Commission: *Gerald E. Wright.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Walter Switzer, Inc., a corporation, doing business as Switzer's, and Walter E. Switzer, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Walter Switzer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 25 E. Adams St., Phoenix, Arizona.

Respondent Walter E. Switzer, Jr. is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are retailers of women's wearing apparel, including but not limited to furs and fur products, with retail stores in Phoenix, Scottsdale, and Mesa, Arizona; Las Vegas, Nevada; and El Paso, Texas.

PAR. 3. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertis-

ing, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder. Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

1. To show the true animal name or animals which produced the fur used in such fur product.

2. To disclose that the fur contained in the fur product was natural, bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To disclose that the fur product was composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, or heads, when such was the fact.

4. To disclose the country of origin of imported fur products.

5. To disclose the required fur information in a legible manner on one side of the label.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed:

1. To show the true animal name of the animal which produced the fur used in such fur products.

2. To disclose that the fur contained in the fur product was natural, bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To disclose that the fur product was composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, or heads, when such was a fact.

4. To disclose the required Item Number.

5. To disclose the country of origin of imported fur products.

PAR. 6. Certain of said fur products were falsely and deceptively advertised by respondents in that they were not advertised as required by Section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised in the Las Vegas Review-Journal and the Arizona Republic, which failed to disclose that the fur contained in the fur product was natural, bleached, dyed or otherwise artificially colored when such was a fact.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the San Francisco 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 Fur Products Labeling Act; and

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

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

1. Respondent Walter Switzer, Inc., d/b/a Switzer's, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal place of business located at 25 East Adams St., Phoenix, Arizona.

Respondent Walter E. Switzer, Jr., is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of

said corporation, and 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 Walter Switzer, Inc., a corporation, trading and doing business as Switzer's, or under any other name, its successors and assigns, and its officers, and Walter Switzer, Jr., individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each subsection of Section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

B. Falsely or deceptively invoicing any fur product by failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words or figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

C. Falsely or deceptively advertising any fur product by failing to show in words plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

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

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the

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

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

It is further ordered, That the 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.

Order

89 F.T.C.

IN THE MATTER OF
EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, Mar. 8, 1977

Denial of respondents' motion for reconsideration.

ORDER DENYING MOTION FOR RECONSIDERATION

On Jan. 25, 1977, the Commission issued an order denying respondents' request for interlocutory review of the administrative law judge's protective order of Jan. 5 on the ground that the ALJ, pursuant to Section 3.23(b) of the Commission's Rules of Practice, had not made a determination that an appeal would be appropriate. The Commission noted that, despite the parties' suggestions to the contrary, the law judge had certified to the Commission only one portion of his protective order (paragraph nine) regarding assurances of prior notification before confidential information is disclosed pursuant to Freedom of Information Act and Congressional committee requests. The portion of the order certified was the subject of a separate Commission order of Jan. 31. In that order the Commission again noted that the ALJ had certified only one portion of the order.

Respondents argue that the Jan. 25 order, unless modified, will work serious prejudice to respondents since "[i]n light of the uniformity of the parties' interpretation of the Administrative Law Judge's certification and the absence of any indication that such certification was in any way limited to fewer than all of the issues raised by the protective order, respondents refrained from filing any separate certification request with the Administrative Law Judge." Finally, respondents argue that the Jan. 31 order "appears to confirm the validity of respondents' concerns about the reliability of any protective order entered by this agency."

With respect to respondents' claim of prejudice, the Commission notes that on Feb. 3, the ALJ issued an order confirming that his certification was limited to paragraph nine. On Feb. 10, "in consideration of respondents' assertion that the reason they did not request certification of my protective order within the time allowed was their understanding that the entire order had been certified," he authorized the filing of respondents' request for certification and, thereupon, denied the request. As for respondents' claim going to the merits of the Commission's Jan. 31 order, the Commission adheres to its view that the order provides appropriate protection. Accordingly,

It is ordered, That the aforesaid motion for reconsideration be, and it hereby is, denied.

Complaint

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

Docket C-2873. Complaint, Mar. 14, 1977 — Decision, Mar. 14, 1977

Consent order requiring a New York City importer and manufacturer of men's and boys' shirts, among other things to cease violating the Textile Fiber Products Identification Act by misbranding textile fiber products and failing to maintain required records.

Appearances

For the Commission: *Martin Gorman.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Textile Fiber Products Identification Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cezar, Ltd., a corporation, and William Arnold, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cezar, Ltd. 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 232 Madison Ave., New York, New York.

Respondent William Arnold 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.

Respondents are now, and for some time last past have been, engaged in the importation and sale of textile fiber products including but not limited to men's shirts.

PAR. 2. Respondents are now and for some time past have been engaged in the introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in

commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce, and have sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's shirts, stamped, tagged, labeled or otherwise identified by respondents as "polyester and cotton" whereas in truth and in fact, said products contained polyester and rayon.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's shirts, with labels which failed:

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of such fibers by weight.

PAR. 5. Certain of said textile fiber products were misbranded by respondents in that fiber trademarks were placed on labels without the generic names of fibers appearing on such labels in immediate conjunction therewith, in violation of Rule 17(a) of the rules and regulations promulgated under the Textile Fiber Products Identification Act.

PAR. 6. Respondents have failed to maintain and preserve proper records showing the fiber content of textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

PAR. 7. The acts and practices of respondents as set forth above

were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce within the intent and meaning of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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, as amended, and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Cezar, Ltd. 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 232 Madison Ave., New York, New York.

Respondent William Arnold is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent and 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 Cezar, Ltd., a corporation, its successors and assigns and its officers, and William Arnold, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or any 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, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:
 - a. falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to the name or amount of the constituent fibers contained therein;
 - b. failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;
 - c. using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing in immediate conjunction therewith in type or lettering of equal size and conspicuousness.
2. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Rules and Regulations promulgated thereunder.

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 each change in business or employment status, which includes discontinuance of his present business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provisions of this paragraph shall not affect any other obligations arising under this 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.

Order

89 F.T.C.

IN THE MATTER OF
SPIEGEL, INC.

Docket 8990. Interlocutory Order, Mar. 22, 1977

Denial of respondent's petition for modification of the modified final order.

ORDER DENYING PETITION FOR RECONSIDERATION

Respondent has filed a petition dated Jan. 31, 1977, which asks the Commission to reconsider its order entered Dec. 26, 1976, pursuant to the opinion of the Seventh Circuit Court of Appeals. The Court of Appeals affirmed and enforced "as modified" the Commission's original order to cease and desist entered on Aug. 18, 1975.¹

This proceeding has not been remanded to the Commission. The Court of Appeals enforced the Commission's order "as modified", and in modifying its order the Commission acted ministerially pursuant to the mandate of the Court of Appeals. The Commission's original order prohibited Spiegel from suing a defaulting consumer debtor in a court located elsewhere than in the debtor's home county or in the county wherein the contract sued upon was executed. The court believed this order provision was overly broad, and in its opinion the court stated:

Therefore, we are of the opinion that the Commission's order should not be enforced insofar as it relates to Illinois consumers who are sued in a county courthouse which is a reasonable distance from their place of residence.

In accordance with this explicit instruction, the Commission modified its order to permit suits by Spiegel against Illinois residents in an Illinois county courthouse which is not an unreasonable distance from the consumer's place of residence.

Spiegel now contends that the foregoing language notwithstanding, it was the intention of the Court of Appeals to modify the

¹ Complaint counsel argue that pursuant to Section 5(i) of the FTC Act, 15 U.S.C. 45, the "order of the Commission rendered in accordance with the mandate of the Court of Appeals" shall become final within 30 days from the time such order was rendered, unless either party has "instituted proceedings to have such order corrected" Since more than 30 days have elapsed from the time the Commission's order was rendered, (and had elapsed when Spiegel's petition was filed) counsel argue that the order is final and Spiegel's petition can at best be construed as a petition for reopening. Spiegel purports to petition pursuant to Section 3.55 of the Rules of Practice, which allows petitions for reconsideration of Commission "decisions" to be filed within 20 days of completion of service. We agree that it is desirable that parties apply first to the Commission for modification of what they construe to be an improper implementation of an appellate court mandate. On the other hand, we do not believe that such application for modification constitutes the "institution of a proceeding to have the order corrected," such as would stay finality of the order. In our view Section 5(i) is most fairly read to render modified orders final within 30 days from date of service, unless respondent seeks review in the Court of Appeals, or the order is stayed, and our own rules are best read to allow a petition for reconsideration of a modified order within 20 days, pursuant to Rule 3.55, with the proviso, as the rule notes, that such petition does not stay the effective date of the order. Accordingly we believe the order in this matter has become final, but we shall nonetheless address the substance of petitioner's request.

Commission's order to eliminate all restraints upon suits against Illinois residents filed by Spiegel in Illinois. Spiegel bases its contention upon a footnote to the above-quoted portion of the court's opinion, in which the court notes that by failing to allege violations based upon suits within Illinois, the Commission did not lay an adequate predicate for the "blanket order" it originally entered.

As we read this footnote, however, it is hardly dispositive with respect to the appropriate remedy, and can provide no basis for the Commission to ignore the explicit textual instruction upon which it originally relied. The court was clearly troubled by the fact that the Commission's order would have prohibited suits in Cook County against consumers in a neighboring county, *e.g.*, Du Page County. After noting this example the court stated that

Since the complaint did not allege any venue problems with suits against Illinois residents we see no reason for the FTC to abridge Spiegel's right to bring suit *wherever the law allows*.

Immediately thereafter, however, the court observes that suits in Cook County against a consumer living in Cairo, hundreds of miles away, would run afoul of the law, *i.e.*, Section Five of the FTC Act. Thus, while the Commission's blanket order respecting intra-Illinois suits was not considered justified by the court, a restriction against intra-Illinois suits at "unreasonable" distances can be readily justified as "fencing in" against violations of Section Five relating to abuse of venue similar to those proven at trial.² In any event, under the circumstances we do not believe we are at liberty to ignore language which is in form an express and absolute mandate to the Commission in favor of respondent's interpretation of surrounding dictum. Therefore,

It is ordered, That petitioner's request to modify the modified final order in this matter be, and it hereby is, denied.

² It is also to be observed that the "notice order" served with the complaint in this matter, did give notice of the Commission's intention to forbid, without distinction as to state, "[i]nstituting suits except in the county where defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon" * * *

Complaint

89 F.T.C.

IN THE MATTER OF

BRYSON IMPLEMENT COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS*Docket C-2874. Complaint, Mar. 22, 1977 — Decision, Mar. 22, 1977*

Consent order requiring a Sampson, Ala., marketer of farming equipment, among other things, to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

*Appearances*For the Commission: *H. Robert Ronick.*For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, as amended, and the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Acts, as amended, the Federal Trade Commission, having reason to believe that Bryson Implement Company, Inc., a corporation, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, as amended, 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 Bryson Implement Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at Main Street, Samson, Alabama.

Respondent Herbert M. Bryson, Jr., 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 advertising, offering for sale and sale of farming implements and equipment to members of the public.

PAR. 3. In the regular course and conduct of their business as

aforesaid, respondents regularly extend and arrange for the extension of credit to be used for agricultural purposes as defined in Section 226.2(e) of Regulation Z and therefore extend consumer credit, as "consumer credit" is defined in Section 226.2(p) of Regulation Z, the implementing regulation of the Truth in Lending Act, as amended, duly promulgated by the Board of Governors of the Federal Reserve Board.

PAR. 4. Subsequent to July 1, 1969, respondents, in the regular course of business as aforesaid and in connection with their credit sales, as "credit sale" is defined in Section 226.2(t) of Regulation Z, have caused, and are causing, customers to execute a binding document entitled as either "Installment Note," "Investment Note Agreement," "Note and Security Agreement" and/or "Retail Installment Contract," which documents are hereinafter referred to as the "contract." Respondents do not provide customers with any other credit cost disclosures.

PAR. 5. By and through the use of the contract, respondents, in many instances:

1. Fail to give to the customer all of the cost of credit information required by Section 226.8 of Regulation Z prior to the consummation of the sale, as required by Section 226.8(a) of Regulation Z;
2. Fail to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z;
3. Fail to disclose the sum of the payments scheduled to repay the indebtedness and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z;
4. Fail to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z;
5. Fail, in conjunction with the description or identification of the type of any security interest held, retained or acquired, to clearly set forth such description on the same side of the page and above or adjacent to the place for the customer's signature on the contract or on one side of a separate statement which identifies the transaction, as required by Section 226.8(a)(1) and (2) of Regulation Z;
6. Fail, in conjunction with the description or identification of the type of any security interest held or to be retained or acquired, to clearly set forth that future indebtedness is secured by the property in which the security interest is retained, as required by Section 226.8(b)(5) of Regulation Z;
7. Fail to identify the method of computing any unearned portion

of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z;

8. Fail to use the term "cash price" to describe the price at which respondents offer, in their regular course of business, to sell for cash the equipment which is the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z;

9. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

10. Fail to use the term "trade-in" to describe any downpayment in property made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

11. Fail to use the term "total downpayment" to describe the sum of the "cash downpayment" and the "trade-in," as required by Section 226.8(c)(2) of Regulation Z;

12. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z;

13. Fail to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z;

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

15. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z;

16. Fail to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z;

17. Fail to disclose the sum of the cash price, all other 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)(ii) of Regulation Z;

18. Fail to include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connection with any credit transaction unless

(i) the insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) any customer desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance, as required by Section 226.4(a)(5) of Regulation Z; and

19. Fail to include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained, as required by Section 226.4(a)(6) of Regulation Z.

PAR. 6. Respondents, in many instances, have failed to maintain evidence of compliance with Regulation Z for two (2) years after the date of each disclosure, as required by Section 226.6(i) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes violations of that Act and, pursuant to Section 108(c) thereof, respondents have thereby violated the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 submit to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, as amended, and the Federal Trade Commission Act, as amended; 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 Acts, as amended, and the implementing regulation promulgated thereunder, as amended, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Bryson Implement Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at Main St., Samson, Alabama.

Respondent Herbert M. Bryson, Jr. 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.

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 Bryson Implement Company, Inc., a corporation, its successors and assigns, and its officers, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of, or arrangement to extend, consumer credit or any advertisement to aid, promote or assist, directly or indirectly, any extension of, or arrangement to extend, consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601-65 (1970), as amended, 15 U.S.C. 1601-65(a), (Supp. IV, 1974)) do forthwith cease and desist from:

1. Failing to give to each customer all of the cost of credit information required by Section 226.8 of Regulation Z prior to the consummation of the sale, as required by Section 226.8(a) of Regulation Z;

2. Failing to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z;

3. Failing to disclose the sum of the payments scheduled to repay

the indebtedness and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z;

4. Failing to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z;

5. Failing, in conjunction with the description or identification of the type of any security interest held, retained or acquired, to clearly set forth such description on the same side of the page and above or adjacent to the place for the customer's signature on the contract or on one side of a separate statement which identifies the transaction, as required by Section 226.8(a)(1) and (2) of Regulation Z;

6. Failing, in conjunction with the description or identification of the type of any security interest held or to be retained or acquired, to clearly set forth that future indebtedness is secured by the property in which the security interest is retained, as required by Section 226.8(b)(5) of Regulation Z;

7. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z;

8. Failing to use the term "cash price" to describe the price at which respondents offer, in their regular course of business, to sell for cash the equipment which is the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z;

9. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

10. Failing to use the term "trade-in" to describe any downpayment in property made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

11. Failing to use the term "total downpayment" to describe the sum of the "cash downpayment" and the "trade-in," as required by Section 226.8(c)(2) of Regulation Z;

12. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z;

13. Failing to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z;

14. Failing to disclose the sum of the "unpaid balance of the cash price" and all other charges individually itemized which are included in the amount financed but which are not part of the finance charge

and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z;

15. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z;

16. Failing to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z;

17. Failing to disclose the sum of the cash price, all other 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;

18. Failing to include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connection with any credit transaction unless

(i) the insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) any customer desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance, as required by Section 226.4(a)(5) of Regulation Z;

19. Failing to include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained, as required by Section 226.4(a)(6) of Regulation Z;

20. Failing to maintain evidence of compliance with Regulation Z for two (2) years after the date of each disclosure, as required by Section 226.6(i) of Regulation Z; and

21. Failing in any consumer credit transaction or advertisement to make all disclosures that are required by Section 226.4, Section 226.5, Section 226.6, Section 226.8 and Section 226.10 of Regulation Z in the manner, form and amount specified therein.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present or future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising

and that respondents secure from each such person a signed statement acknowledging receipt 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 of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

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

Complaint

89 F.T.C.

IN THE MATTER OF

RICHARD D. JONES MORTGAGE SERVICES, INC., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS*Docket C-2785. Complaint, Mar. 25, 1977 — Decision, Mar. 25, 1977*

Consent order requiring a La Mesa, Calif., finance company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such disclosures as are required by Federal Reserve System regulations.

Appearances

For the Commission: *Paul R. Roark.*

For the respondents: *Michael M. Anello, Wingert, Grebing & Anello, San Diego, Calif.*

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 Richard D. Jones Mortgage Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Richard D. Jones Mortgage Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 8580 La Mesa Boulevard, La Mesa, Calif.

Respondent Richard D. Jones is an individual and 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 arranging for the extension of credit through the operation of a mortgage brokerage business, which generally arranges, for a fee, for investors to lend money to consumers using real property as security for the performance of the obligation arising out of the transaction.

PAR. 3. In the ordinary course and conduct of their business as aforesaid respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 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, respondents arrange for the extension of loans which are not a credit sale. In these transactions, respondents:

1. Fail to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

2. Fail to determine accurately the finance charge, by failing to include service, transaction, activity or carrying charges, loan fees, points, finder's fees or similar charges, as required by Section 226.4(a) of Regulation Z.

3. Fail to include in the finance charge fees for title examination, abstract of title, title insurance, preparation of deeds, settlement statements, other documents, appraisal fees and credit reports, in excess of reasonable amounts, as required by Section 226.4(e) of Regulation Z.

4. Fail to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

5. Disclose additional information or explanation stated, utilized and placed so as to mislead or confuse the customer and to contradict, obscure and detract attention from the information required to be disclosed by Section 226.8 of Regulation Z, as proscribed by Section 226.6(c) of Regulation Z.

6. Fail to preserve, for two years, evidence of compliance with the disclosure requirements of Regulation Z, other than the advertising requirement under Section 226.10, as required by Section 226.6(i) of Regulation Z.

7. Fail to make the disclosures required by Section 226.8 of

Regulation Z on either (1) the note or instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or (2) one side of a separate statement which identifies the transaction, as required by Section 226.8(a) of Regulation Z.

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

9. Fail to disclose the due dates or periods of payment scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

10. Fail, in arranging for the extension of credit for loans secured by other than first liens or equivalent security interest on a dwelling made to finance the purchase of that dwelling, to disclose the sum of all the periodic payments and fail to use the term "total of payments" to describe said sum as required by Section 226.8(b)(3) of Regulation Z.

11. Fail, where a payment is more than twice the amount of an otherwise regularly scheduled equal payment, to identify the amount of such payment by using the term "balloon payment," as required by Section 226.8(b)(3) of Regulation Z.

12. Fail to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

13. Fail to describe the penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation with an explanation of the method of computation of such penalty and the conditions under which it may be imposed, as required by Section 226.8(b)(6) of Regulation Z.

14. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

15. Fail to identify the amount of credit which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended out which are not part of the finance

charge, using the term "amount financed," as required by Section 226.8(d)(1).

16. Fail to disclose, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge using the term "finance charge," as required by Section 226.8(d)(3) of Regulation Z.

17. Fail, in the case of transactions in which a security interest is or will be retained or acquired in any real property which is used or expected to be used as the principal residence of the customer, except in the case of the creation, retention or assumption of a first lien or equivalent security interest as provided in Section 226.9(g) of Regulation Z, to:

a. disclose that the customer has a right to rescind the transaction by midnight of the third business day following the transaction, as required by Section 226.9 of Regulation Z;

b. set forth along with the notice contemplated by Section 226.9(b) of Regulation Z, Section 226.9(d) of Regulation Z, as required by Section 226.9(b) of Regulation Z; and

c. delay performance of respondents' obligations under contract until the rescission period has expired, as required by Section 226.9(c) of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, respondents have failed and are now failing to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Los Angeles 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 of the Truth in Lending Act and the implementing regulation promulgated thereunder;

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

1. Respondent Richard D. Jones Mortgage Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 8580 La Mesa Boulevard, La Mesa, Calif.

Respondent Richard D. Jones is an officer of said corporation. He formulates, directs and controls the policies, act 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 Richard D. Jones Mortgage Services, Inc., a corporation, its successors and assigns, and its officers, and Richard D. Jones, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 C.F.R. 226) of the implementing regulation of the Truth in Lending Act, [15 U.S.C. 1601-1665 (1970), as amended, 15 U.S.C. 1601-1665(a), (Supp. IV, 1974)], do forthwith cease and desist from:

1. Failing to make the disclosures required by Section 226.8 of

Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

2. Failing to include in the finance charge the service, transaction, activity or carrying charges, loan fees, points, finder's fees and similar charges as required by Section 226.4(a) of Regulation Z.

3. Failing to include in the finance charge fees for title examination, abstract of title, title insurance, preparation of deeds, settlement statements, other documents, appraisal fees and credit reports, in excess of reasonable amounts, as required by Section 226.4(e) of Regulation Z.

4. Failing to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

5. Disclosing additional information or explanation stated, utilized or so placed so as to mislead or confuse the customer or to contradict, obscure or detract attention from the information required to be disclosed by Section 226.8 of Regulation Z, including, but not limited to, setting forth any rate of interest or annual percentage rate in percentage terms which is not the true annual percentage rate required to be disclosed by Regulation Z and this order, as required by Section 226.6(c) of Regulation Z.

6. Failing to preserve, for two years, evidence of compliance with the disclosure requirements of Regulation Z, other than the advertising requirements under Section 226.10, as required by Section 226.6(i) of Regulation Z.

7. Failing to make the disclosures required by Section 226.8 of Regulation Z on either (1) the note or instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or (2) on one side of a separate statement which identifies the transaction, as required by Section 226.8(a) of Regulation Z.

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

9. Failing to disclose the due dates or periods of payment scheduled to repay indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

10. Failing, in arranging for the extension of credit loans secured by other than a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling, to disclose the sum of all payments and failing to use the term "total of payments" to describe said sum, as required by Section 226.8(b)(3) of Regulation Z.

11. Failing, in transactions where a payment is more than twice the amount of an otherwise regularly scheduled equal payment, to identify the amount of such payment by using the term "balloon payment," as required by Section 226.8(b)(3) of Regulation Z.

12. Failing to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

13. Failing to describe the penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation with an explanation of the method of computing such penalty and the conditions under which it may be imposed, as required by Section 226.8(b)(6) of Regulation Z.

14. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

15. Failing to identify the amount of the credit which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge, using the term "amount financed," as required by Section 226.8(d)(1) of Regulation Z.

16. Failing to disclose, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge, using the term "finance charge," as required by Section 226.8(d)(3) of Regulation Z.

17. Failing, in the case of a transaction in which a security interest is or will be retained or acquired in any real property which is used or expected to be used as the principal residence of the customer, except in the case of the creation, retention or assumption of a first lien or equivalent security interest, as set forth in Section 226.9(g) of Regulation Z, to:

a. Disclose that the customer has a right to rescind the transaction by midnight of the third business day following the transaction, as required by Section 226.9 of Regulation Z; and

b. Furnish the customer with two copies of the notice set forth at Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z; and

c. Set forth, along with the notice contemplated and required by Section 226.9(b) of Regulation Z, Section 226.9(d) of Regulation Z, as required by Section 226.9(b) of Regulation Z; and

d. Delay performance of respondents' obligations under contract until the rescission period has expired, as required by Section 226.9(c) of Regulation Z.

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

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

It is further ordered, That 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.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of each change in his business or employment status, including discontinuance of his present business or employment, and each affiliation with a new business or employment for a period of ten years following the effective date of this order. Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the business or employment as well as a description of the respondent's duties and responsibilities in that business or employment.

Complaint

89 F.T.C.

IN THE MATTER OF

NATIONAL MERIDIAN SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9027. Complaint, Mar. 25, 1975 — Decision, Mar. 28, 1977*

Consent order requiring a Woodbury, N.Y., marketer of a basement waterproofing and termite control process, among other things to cease misrepresenting the size, extent and nature of its business; misrepresenting the qualifications and abilities of its employees; misrepresenting the effectiveness, performance, durability and uniqueness of its products and services. Further, respondents are required to maintain adequate records for a period of three years; make prescribed disclosures regarding limitations of their waterproofing; and respond to requests for maintenance or service within seven days. Additionally, the terms of the order require respondents to provide a three-day cooling-off period during which customers may cancel their contracts and receive prompt refunds of monies paid; maintain a reasonable customer relations department and institute a surveillance program designed to insure compliance with the provisions of the order.

Appearances

For the Commission: *Michael E. K. Mpras and Jerry W. Boykin.*
For the respondents: *Jack Lipson and Stephen Sacks, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Meridian Services, Inc., a corporation, and Meridian Waterproofing Corporation, a corporation, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc., have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent National Meridian Services, 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 151 East Jericho Turnpike, Mineola, New York.

Said respondent controls and dominates the acts and practices of

respondent Meridian Waterproofing Corporation, a wholly-owned subsidiary, which 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 151 East Jericho Turnpike, Mineola, New York.

Respondent Michael C. Pascucci is an officer and director of the corporate respondents. Respondent Austin Royle is an officer of the corporate respondents and director of respondent National Meridian Services, Inc. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale of residential and commercial waterproofing and related termite control products and services to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, services, advertising and promotional material, contracts and other business papers and documents to be shipped and transmitted to, from and among their several places of business located in various states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, as aforesaid, for the purpose of obtaining leads or prospects for the sale of basement waterproofing and related termite control products and services and for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen, servicemen and representatives, cause prospective purchasers of their basement waterproofing and related termite control products and services who have answered respondents' advertisements to be interviewed by salesmen at the place of residence of individual prospective purchasers. Said salesmen endeavor to sell respondents' basement waterproofing and related termite control products and services, and for the purpose of inducing the sale of said products and services, said salesmen have made numerous statements and representations, directly or by implication, orally, by means of brochures or other printed material displayed by salesmen to prospective purchasers, and through television and newspaper advertisements, respecting

the nature of their offer and their business, price, time limitations, their guarantee, and the quality of their products and services.

Typical and illustrative of respondents' published advertising and representations, but not all-inclusive thereof, are the following:

Now Meridian, the Nationwide Home Service, will solve your basement problems at a truly amazing Low Cost, WITHOUT DIGGING, INCLUDING AN ALL STEEL SYSTEM, AND SPECIFY THE RESULTS IN WRITING. No job too small. No damage to shrubs or driveway.

MERIDIAN - THE NATION'S LARGEST - roof to basement waterproofing company.

LEAKY BASEMENT? Don't mop it - stop it -Send today for FREE U.S. GOV'T. BULLETIN & EASY DO-IT-YOURSELF HINTS. Learn how to solve leaky basement problems.

Meridian can waterproof any and all water seepage problems - WILL STOP THAT LEAKY BASEMENT ONCE AND FOR ALL.

MERIDIAN STANDS BY ITS WORK WITH A WRITTEN GUARANTEE.

A Meridian Exclusive!

Another Exclusive!

Continued, Guaranteed Protection

Your Problem Solved

No Inconvenience, Done Quickly

Quality Materials

Expert Workmanship

Life Time Protection

Only Recognized Waterproofing And Termite Control In One Application!

Total Foundation Protection

We Must Satisfy You

Termites - Quietly and Unseen Attack Inside - Outside - Underneath * * * No Home Is Safe From Termites Unless It's Treated.

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, and through oral statements and representations made by their agents and representatives, the respondents have represented, and are now representing, directly or by implication, that:

1. Respondents' methods of basement waterproofing and related termite control are an exclusive process; and that respondents use a unique method of combined waterproofing and termite control application.
2. Respondents are the nation's largest waterproofing company and have offices from coast to coast.
3. Respondents have received praise and acclaim for their waterproofing and termite control services, from, among other publications, *The New York Times*, *Better Homes and Gardens*, *Popular Science*, and the *Sunday News* (New York).
4. A purchaser dealing with respondents can be sure of carefully inspected and carefully performed quality workmanship.
5. Respondents will provide prompt service, where needed, following completion of any waterproofing or related termite control job.
6. Respondents' method of combining termite control with their waterproofing service provides homeowners with a complete termite service and complete termite barrier or shield, and that such termite barrier or shield is permanent.
7. Respondents' representatives and employees have the training, experience, ability, or equipment to waterproof leaky basements completely and to keep them dry permanently.
8. Respondents' waterproofing and termite control services are guaranteed.
9. Respondents' method of waterproofing will waterproof basements without digging and without causing damage to shrubs, driveways, walls, floors or foundations.
10. Respondents will mail any homeowner who so requests waterproofing bulletins that will provide him with enough information to waterproof his leaky basement without professional assistance.
11. The pumping of bentonite or the chemical substance $\text{Na}_4\text{SO}_4 + \text{CaCl}_2 + \text{H}_2\text{O}$, trade named "Meridian Seal", around the basement foundation walls is a completely effective or permanent method of basement waterproofing.
12. The homes of prospective purchasers of waterproofing or termite control services are in immediate danger of serious termite or water damage.
13. Complete termite control treatment or protection is included in the basement waterproofing service.
14. Respondents' services are being offered for sale at special or reduced prices and that savings are thereby offered to purchasers from respondents' regular selling prices.

15. Respondents' services are designed to render basements impermeable to water and moisture.

PAR. 6. In truth and in fact:

1. Respondents' methods of basement waterproofing and related termite control are not exclusive or unique but have been and are utilized by other competing basement waterproofing companies.

2. Respondents are not the nation's largest waterproofing company and do not have offices from coast to coast.

3. Respondents have not received praise and acclaim for their waterproofing and related termite control services from any publications, and specifically not from *The New York Times*, *Better Homes and Gardens*, *Popular Science*, or the *Sunday News* (New York).

4. A purchaser dealing with respondents cannot be sure of carefully inspected and carefully performed quality workmanship. Further, services offered by respondents have, in many instances, been performed in a manner indicating lack of skill or training, incompetence or indifference, and have, in many instances, been of poor quality.

5. Respondents do not, in many instances, provide prompt service to their customers following completion of any waterproofing or related termite control job but, in many cases, respondents' customers wait for weeks or months before any such service is rendered.

6. Respondents' method of combining termite control with their waterproofing service does not provide homeowners with a complete termite service and complete termite barrier or shield, and such termite proofing is not permanent. In fact, in many cases, respondents' representatives and employees lack the training and experience to inspect, diagnose, or treat the existence of termites in a home.

7. Respondents' representatives and employees are not trained, experienced, able or equipped to waterproof leaky basements completely or permanently, but are, in many instances, engaged in diverting water, once it has penetrated into the basement, out of the basement walls and floors.

8. Respondents have failed, in many instances, to provide the servicing obligations which they agreed to provide under their basement waterproofing contracts and guarantees. Further, representations of guarantee have been made without setting forth the extent and nature of the guarantee, and the manner in which the guarantor will perform thereunder.

9. Respondents' method of waterproofing, has, in many instances, caused damage to shrubs, driveways, walls, floors or foundations.

10. Respondents in a number of instances, have failed to mail to homeowners who so request waterproofing or termite control bulle-

tins but sent instead a Meridian salesman; and such bulletins, when mailed, do not, in many instances, provide enough information to enable homeowners to waterproof or termite proof their leaky basements without professional assistance. Further, such bulletins are used by respondents to obtain leads in selling their waterproofing and termite control services.

11. The pumping of bentonite or the chemical substance $\text{Na}_2\text{SO}_4 + \text{CaCl}_2 + \text{H}_2\text{O}$, trade named "Meridian Seal," around the basement foundation walls is neither a completely effective nor a permanent method of basement waterproofing. Further, soil conditions and the water table affect such substances to the extent that it is difficult to predict when such substances can be effective sealants without ascertaining the level of the water table and the type of soil conditions surrounding the basement walls.

12. In many cases, the homes of prospective purchasers of waterproofing or related termite control services are in no immediate danger of serious water or termite damage.

13. Complete termite control treatment protection is often not provided with respondents' basement waterproofing service.

14. Respondents' services are often not being offered for sale at special or reduced prices and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. In fact, the prices at which respondents' services are sold often vary from customer to customer, depending on the resistance of the prospective purchaser.

15. Respondents' services are, in many instances, not designed to render basements impermeable to water and moisture, but rather such services are designed to divert water out of the basement floors and walls by means of sump pumps, cove plates and other methods once the water has penetrated the basement walls or floors.

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 further course and conduct of their business and in the furtherance of their purpose of inducing prospective customers to execute contracts for their waterproofing and related termite control products and services, respondents and their employees, salesmen, and representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six, above, respon-

dents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 8. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their waterproofing and related termite control products and services, respondents have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer 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 and deceptive acts and practices.

PAR. 9. In the course and conduct of their business, as aforesaid, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of basement waterproofing and termite control products and services of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and complete, and into the purchase of respondents' products and services by reason of said erroneous and mistaken belief. Respondents' aforesaid acts and practices unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred.

PAR. 11. The acts and practices of the 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 or affecting commerce and unfair or

deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by respondents that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedures described in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

Respondent National Meridian Services, 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 175 Crossways Park West, Woodbury, New York.

Respondent Meridian Waterproofing Corporation, a wholly-owned subsidiary of National Meridian Services, 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 175 Crossways Park West, Woodbury, New York.

Respondent Michael C. Pascucci is an officer and director of the corporate respondents. Respondent Austin Royle is an officer of the corporate respondents and a director of respondent National Meridian Services, Inc. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of the corporate respondents.

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 National Meridian Services, Inc., a corporation, Meridian Waterproofing Corporation, a corporation, their successors and assigns, and their officers and directors, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc., 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 residential and commercial waterproofing and related termite control products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that respondents employ an exclusive or unique process in their basement waterproofing or related termite control business.

2. Representing, directly or by implication, orally or in writing, that respondents are the nation's largest waterproofing company, or that respondents have offices from coast to coast, unless such are facts, or otherwise misrepresenting in any manner the size, extent or nature of respondents' business.

3. Representing, directly or by implication, orally or in writing, that respondents are the recipients of praise, acclaim or approval for their waterproofing or related termite control process or services from *The New York Times*, *Better Homes and Gardens*, *Popular Science*, and the *Sunday News* (New York), or otherwise misrepresenting, in any manner, that respondents are the recipients of praise, acclaim or approval from any publication, organization or person.

4. Failing to disclose, clearly and conspicuously in all advertising, that respondents do not, in many instances, provide prompt service to their customers following completion of any waterproofing or related termite control work, but, in many instances, keep their customers waiting for weeks or months before any such service is rendered; *provided*, that the foregoing disclosure will not be required so long as respondents:

(a) Maintain an address and telephone number to which customers

may direct complaints or requests for repair work, contract adjustments, or correction of faulty products or services;

(b) Furnish each customer at the time of sale of any waterproofing or related termite control services the address and telephone number to which such complaints or requests may be directed; and

(c) Respond to such complaints and requests within seven (7) days from the date of receipt thereof from past purchasers of respondents' waterproofing and related termite control services.

5. Failing to maintain (a) adequate records which disclose the date and nature of all service calls, the date and nature of all demands for refunds made by respondents' customers, the date, amount and reason for any refunds given to respondents' customers, and related documents in connection with the implementation of Paragraph 4(a), (b) and (c), and (b) sample copies of each type of advertisement, including newspaper, radio and television advertisements, direct mail solicitation literature, and any promotional material utilized for the purpose of obtaining leads for the sale of waterproofing or related termite control products and services.

6. Using the words "permanently" or "completely," or other words or phrases of similar import or meaning, to describe respondents' basement waterproofing or related termite control process or services; representing, in any manner, that respondents have the training, experience or ability to waterproof leaky basements completely or to keep them dry permanently.

7. Representing, directly or by implication, orally or in writing, that a basement can be waterproofed without digging, or without damage to shrubs, driveways, walls, floors or foundations.

8. Failing to mail to any homeowner who so requests the waterproofing and termite control bulletins so advertised by respondents; and failing to disclose clearly and conspicuously in each advertisement wherein such bulletins are mentioned the following notice set off from the text of the advertisement by a black border:

The purpose of this solicitation is to obtain your name and address so that a Meridian salesman may call upon you. Such waterproofing and termite control bulletins do not provide sufficient information to enable you to waterproof or termite proof your basement without professional assistance.

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

10. Making any claim or representation, orally or in writing,

relating to the efficacy or performance of respondents' waterproofing or related termite control process or services unless, at the time such claim or representation is made, respondents have a reasonable basis for such claim or representation.

11. Failing to maintain accurate records which may be inspected and copied by Commission staff members upon ten (10) days notice:

(a) Which consist of documentation to support any and all claims made after the effective date of this order in advertising or sales promotion material concerning the efficacy and performance characteristics of any waterproofing or related termite control process of services marketed by the respondents.

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

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

12. Misrepresenting, in any manner, the education, training or experience of any of respondents' employees.

13. Representing, directly or by implication, orally or in writing, that any of respondents' waterproofing or related termite control products or services are guaranteed, unless the nature, extent, and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in any advertisements, brochures, contracts or other printed materials wherein the terms "guarantee" or "warranty" are used, and orally, prior to the signing of any contract, and unless the guarantor will, in fact, perform as stated in the disclosed guarantee.

14. Representing, directly or by implication, orally or in writing, that respondents' method of pumping bentonite or the chemical substance $\text{Na}_2\text{SO}_4 + \text{CaCl}_2 + \text{H}_2\text{O}$, trade named "Meridian Seal," or any other substantially similar substance, is a completely effective or permanent method of basement waterproofing. Misrepresenting, in any manner, the efficacy of bentonite or "Meridian Seal."

15. Inducing the sale of waterproofing or termite control services, or any other product or service, by employing "scare tactics" to create an exaggerated impression of the risk of serious termite, water, or other damage or injury, or the immediacy of such risk, or misrepresenting in any manner the nature and extent of the threat that water leakage or termites present to property.

16. Representing, directly or by implication, orally or in writing, that any price for waterproofing or related termite control products

or services is a special or reduced price from the price respondents normally charge, unless (a) respondents have made bona fide sales at a higher reference price in the recent past; (b) the reference price is the immediately preceding price or is disclosed to be otherwise; and (c) either the reference price, the dollar savings computed therefrom, or the percentage savings computed therefrom is disclosed.

17. Contracting for any sale of basement waterproofing or related termite control products or services in the form of a sales contract or other agreement which shall become binding on the buyer prior to midnight of the third business day, excluding Sundays and legal holidays, after the date of execution of the contract or other agreements.

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

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

19. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point boldface type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[enter date of transaction]

(date)

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

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

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

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

21. Failing or refusing to honor any valid notice of cancellation by a buyer and within fifteen (15) business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale.

22. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by the purchaser, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

(a) The disclosures, if any, required by Federal law or the law of the state in which the instrument is executed;

(b) Where negotiation of the instrument to a third party is not prohibited by the law of the state in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party.

23. (a) Failing to disclose in writing on the face of every contract for the pressure pumping process, in bold print, on an easily detachable form which shall be executed by the customer and retained by the seller and orally, prior to the signing of any such contract, and in ten point bold face type in all advertisements, promotional materials and similar documents for such process, the following notice:

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

(b) Failing to disclose in radio and other electronic media advertisements for the pressure pumping process the following notice:

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

B. *It is further ordered*, That respondents:

1. Deliver a copy of this order to cease and desist to all present and future employees, salesmen, agents, independent contractors, or other representatives engaged in (a) the offering for sale, sale, or servicing of any of its waterproofing or related termite control products and services, or (b) any aspect of preparation, creation, or placing of advertising, and secure a signed statement acknowledging receipt of that order from each such person.

2. Inform all recipients of this order pursuant to subsection 1. above that respondents are obligated by the order to discontinue dealing with any person who commits acts or practices prohibited by it.

3. Institute a program of continuing surveillance to reveal whether respondents' employees, salesmen, agents, independent contractors or other representatives are engaging in acts or practices which violate this order.

4. Discontinue dealing with or terminate the use or engagement of any person described in paragraph 1 above, as revealed by the aforesaid program of surveillance, who continues on his own any act or practice prohibited by this order.

5. Maintain complete records for a period of no less than three years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any employee, salesmen, agent, independent contractor or other representative; and to maintain complete records of terminations as required by subparagraph 4 of this paragraph. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the individual involved, the date of communication and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission during normal business hours upon reasonable advance notice.

6. That respondents, for a period of one (1) year from the effective date of this order, provide each advertising agency utilized by

respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of waterproofing or related termite control products and services, with a copy of the Commission's News Release setting forth the terms of this order.

II

It is further ordered:

A. That respondents notify the Commission at least thirty (30) 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 which may affect compliance obligations arising out of the order.

B. 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.

C. 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.