

institutions, or business or professional establishments;

(iii) the collection of delinquent or other accounts with respect to any yearbook or other product or service offered in connection with any encyclopedia or any other home reference material which is furnished to purchasers, other than libraries, schools, institutions, or business or professional establishments, under a contract or agreement to purchase at a stated price.

(b) Respondents obtain from each person covered by subparagraph (a) above a signed statement setting forth his intention to conform his business practices to the requirements of this order; retain said statement during the period said person is so engaged and for a period of one (1) year thereafter; and make said statement available to the Commission's staff for inspection and copying upon request.

(c) Respondents inform each person covered by subparagraph (a) above that respondents will not engage, or will terminate the engagement or services of any said person, unless each said person agrees to and does file a notice with the respondents that he will be bound by the provisions contained in this order;

(d) If any person covered by subparagraph (a) above does not agree to file such a notice with the respondents and be bound by the provisions of this order, the respondents shall not engage or utilize the services of such person in any of the activities or functions referred to in said subparagraph (a) above;

(e) Respondents advise each person covered by subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive or unfair acts or practices prohibited by this order;

(f) Respondents institute a program of continuing surveillance adequate to reveal whether the business practices of each of the persons covered by subparagraph (a) above conform with the provisions and requirements of this order;

(g) Respondents discontinue their relationship with any person covered by subparagraph (a) above in the event it should be revealed by the aforesaid program of

surveillance that any such person has, after the date of this order, engaged on more than one occasion, in any act or practice prohibited by this order; and

(h) Respondents submit to the Commission a detailed report every six (6) months for a period of three (3) years from the effective date of this order demonstrating the effectiveness of the steps or actions taken by respondents with regard to the aforesaid surveillance program.

2. *It is further ordered*, That respondents shall 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 respective corporations which may affect compliance obligations arising out of this order.

V

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

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

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

Docket C-2395. Complaint, May 1, 1973—Decision, May 1, 1973.

Consent order requiring a New York City retailer and manufacturer of women's apparel, linens and fabrics, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by

virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Leron, Inc., a corporation, and Norman G. Forster, 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 Flammable Fabrics Act, 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 Leron, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 745 Fifth Avenue, New York, New York.

Respondent Norman D. Forster is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the retailing of women's apparel and linens and manufacturing of apparel, including, but not limited to, the sale of apparel and fabrics.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, the sale and offering for sale, in commerce, and the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, fabrics and/or products as the terms "commerce," "product" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabrics mentioned hereinabove were two 100 percent silk fabrics.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, 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, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Leron, 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 745 Fifth Avenue, New York, New York.

Respondent Norman D. Forster is an officer of said corporation whose address is located at 745 Fifth Avenue, New York, New York. He formulates, directs and controls the acts, practices and policies 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 respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondent Leron, Inc., a corporation, its successors and assigns, and its officers, and Norman D. Forster, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the fabrics and/or products which gave rise to the complaint, of the flammable nature of said fabrics and/or products and effect the recall of said fabrics and/or products from such customers.

It is further ordered, That the respondents herein either process the fabrics and/or products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabrics and/or products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabrics and/or products which gave rise to the complaint, (2) the amount and number of said fabrics and/or products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of

said fabrics and/or products and effect the recall of said fabrics and/or products from customers, and of the results thereof, (4) any disposition of said fabrics and/or products since September 15, 1970, and (5) any action taken or proposed to be taken to bring said fabrics and/or products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabrics and/or products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

IN THE MATTER OF
DISCOUNT CARPETS, INC., ET AL.

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

Docket C-2396. Complaint, May 2, 1973—Decision, May 2, 1973.

Consent order requiring a Rockville, Maryland, seller, distributor, and installer of carpeting and floor coverings, among other things to cease misrepresenting sale prices as being significantly less than the regular prices; misrepresenting comparative prices; misrepresenting percentage savings; failing to maintain adequate records; misrepresenting the training, certification, or qualifications of any of respondents' personnel; and falsely advertising and misbranding its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Discount Carpets, Inc., a corporation, and Bobby Gene Chambers, 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 Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Discount Carpet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 15811 Frederick Road, Rockville, Maryland.

Respondent Bobby Gene Chambers is an individual and is the principal 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 business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale,

distribution and installation of carpeting and floor coverings to the public.

COUNT I

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

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

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

	DISCOUNT CARPET					
	CARPET SALE — REMNANTS					
	300 To Choose From At Savings Of 40% to 60%					
*	*	*	*	*	*	*
	SHOP AT HOME DECORATOR SERVICE					
*	*	*	*	*	*	*
	WE SELL DISCOUNT ALL THE TIME					
	EVERYDAY IS SALE DAY!					
*	*	*	*	*	*	*
	PROFESSIONAL INSTALLATION					
	Certified Craftsmen To Insure the Outstanding Appearance					
	and Performance Of Your New Carpeting					
*	*	*	*	*	*	*
	COMPARE AT			SALE		
	\$118.00			\$69.00		
	\$169.00			\$45.00		
*	*	*	*	*	*	*

*Kodel
*Fortel

*Acrilan
*Herculon

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

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

2. Purchasers of respondents' carpet remnants are afforded savings of 40 to 60 percent of the prices at which such carpet remnants are usually and customarily sold at retail.

3. By and through the use of the words "Discounts Galore" and other words of similar import and meaning but not expressly set out herein, that respondents' merchandise is offered for sale or sold at discount prices or at prices below those charged by other retail establishments for the same or substantially similar merchandise.

4. By and through the use of the words "Decorator Service" and other words of similar import and meaning not set out specifically herein, respondents offer to the prospective customer the services of a trained and qualified interior decorator.

5. By and through the use of the words "Professional Installation - Certified Craftsmen" and other words of similar import and meaning not set out specifically herein, respondents offer to the prospective customer the services of carpet installers who have received certification by a recognized institution or government licensing agency.

PAR. 6. In truth and in fact:

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

2. Purchasers of respondents' carpet remnants are not

afforded savings of 40 to 60 percent of the prices at which such carpet remnants are usually and customarily sold at retail. To the contrary, the percentage price comparison is based on prices for quantities of carpeting required for wall-to-wall installation rather than the advertised carpet remnants or rugs which are usually sold for less than wall-to-wall prices.

3. Respondents' merchandise is not offered for sale or sold at discount prices or at prices below those charged by other retail establishments for the same or substantially similar merchandise.

4. Respondents do not employ or have available for their prospective customers a trained, qualified interior decorator. To the contrary, respondents' regularly employed salesmen, who do not have any special training in the art of decorating, are utilized as "decorators" by respondents.

5. Respondents' installers have not received certification by a recognized institution or government licensing agency.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

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

COUNT II

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

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

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

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

PAR. 13. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in the Washington Daily News newspaper

published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

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

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

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

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

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

DECISION AND ORDER

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

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

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

1. Respondent Discount Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 15811 Frederick Road, Rockville, Maryland.

Respondent Bobby Gene Chambers, is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his business address is the same as that of said corporation.

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

ORDER

I

It is ordered, That respondents Discount Carpets, Inc., a corporation, its successors and assigns, and its officers, and Bobby Gene Chambers, 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 advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to

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

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

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

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

6. Representing, directly or by implication, that any article of merchandise is offered for sale or sold at a discount price or at a price below the price charged by other retail establishments for the same or substantially similar merchandise unless respondent shall have conducted, within twelve months before making any such representation, a statistically significant survey of principal retail establishments in the same trade area, which survey establishes that a substantial number of such outlets sell the same or similar merchandise at prices

substantially above the prices represented by respondent to be discount, and unless respondent shall retain all documents relating to the manner in which such survey was conducted and the results thereof for at least twenty-four months after making any such representation.

7. Representing, directly or by implication, orally or in writing, that respondents employ or have available for their prospective customers a trained, qualified interior decorator; or that respondents' installers have received certification by a recognized institution or government licensing agency; or misrepresenting in any manner, the training, certification, or qualifications of any of respondents' employees, agents, or representatives.

II

It is further ordered. That respondents Discount Carpets, Inc., a corporation, its successors and assigns, and its officers, and Bobby Gene Chambers, 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, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

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

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by

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

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

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

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

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

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

other merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

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

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

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

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

It is further ordered, That 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 of their compliance with this order.

IN THE MATTER OF
RUBINS DISCOUNT CARPET CENTER
OF VIRGINIA, INC., ET AL.

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

Docket C-2397. Complaint, May 2, 1973—Decision, May 2, 1973.

Consent order requiring an Arlington, Virginia, corporation and other corporations which sell, distribute, and install carpeting and floor coverings, among other things, to cease misrepresenting sale prices as being significantly less than regular selling prices; misrepresenting comparative prices; misrepresenting percentage savings; failing to maintain adequate records; and falsely advertising and misbranding its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rubins Discount Carpet Center of Virginia, Inc., a corporation, and Rubins Discount Carpet Center of Maryland, Inc., a corporation, and Rubins Discount Carpet Center of Pennsylvania, Inc., a corporation, and Rubins Discount Carpet Center of New Jersey, Inc., a corporation, and Milton Rubin, Alvin Rubin, and Stanley Greenberg, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it 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 Rubins Discount Carpet Center of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 3185 Wilson Boulevard, Arlington, Virginia.

Respondent Rubins Discount Carpet Center of Maryland, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with

its principal office and place of business located at 5904 Riggs Road, Chillum, Maryland.

Respondent Rubins Discount Carpet Center of Pennsylvania, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at the Northwest Corner of Third and Race Streets, Philadelphia, Pennsylvania.

Respondent Rubins Discount Carpet Center of New Jersey, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1105 Linden Street, Camden, New Jersey.

Respondents Milton Rubin, Alvin Rubin and Stanley Greenberg are individuals and officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of respondents Milton Rubin and Alvin Rubin is the Northwest Corner of Third and Race Streets, Philadelphia, Pennsylvania. The business address of respondent Stanley Greenberg is 3185 Wilson Boulevard, Arlington, Virginia.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the States of Virginia, Maryland, Pennsylvania, and New Jersey, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times

mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

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

		Grand Opening Sale					
		REMNANTS					
		Reg. \$200	NOW \$59.00				
*	*	*	*	*	*	*	*
		RUBINS DISCOUNT CARPET CENTER					
*	*	*	*	*	*	*	*
		DOOR BUSTER					
		KODELS, ACRILANS, POLYESTERS, NYLONS, PILES					
		\$4.95					
		Formerly \$8 to \$16 sq. yd.					
*	*	*	*	*	*	*	*
		Real 75% Savings					
*	*	*	*	*	*	*	*
		QUANTITY RIGHTS RESERVED - NO SALES TO DEALERS					
*	*	*	*	*	*	*	*
		RUG SALE					
		9 x 12 - \$19					
		LARGE APTS. SUPPLIER					
		Has a huge surplus of new room size rugs					
		from recent apartment installations					
*	*	*	*	*	*	*	*
		ACRILANS, POLYESTERS, NYLONS					
*	*	*	*	*	*	*	*

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

1. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically

herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

2. The amounts designated as "Reg." and "Formerly" were the prices at which the advertised carpet remnants and rugs had been sold by respondents in the recent, regular course of their business.

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

4. Purchasers of respondents' merchandise are afforded savings of 75 percent of the prices at which such merchandise is usually and customarily sold at retail.

5. By and through the use of the words "Quantity Rights Reserved - No Sales to Dealers," and other words of similar import and meaning not set out specifically herein, that carpet dealers or retail floor covering establishments cannot purchase the carpets or floor coverings at the same prices or from the same sources which are available to respondents.

PAR. 6. In truth and in fact:

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

2. Said carpet remnants and rugs had not been customarily and usually sold at retail by respondents in the recent, regular course of their business for the amounts set out in the advertisements as "Reg." and "Formerly." To the contrary, the amounts designated by respondents as "Reg." and "Formerly" refer to quantities of carpeting required for wall-to-wall installation and not to the advertised carpet remnants or rugs which are usually sold for less than wall-to-wall prices.

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

4. Purchasers of respondents' merchandise are not afforded savings of 75 percent of the prices at which such merchandise is usually and customarily sold at retail.

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

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

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

COUNT II

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

PAR. 10. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including

carpeting and floor covering and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

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

PAR. 13. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in the Evening Star and the Washington Post newspapers, published in the District of Columbia, and the Philadelphia Inquirer, published in the city of Philadelphia, Pennsylvania, and having a wide circulation in the District of Columbia and the State of Pennsylvania and various other States of the United States, in that said carpeting was decried by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not

advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

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

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

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts

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

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

1. Respondent Rubins Discount Carpet Center of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 3185 Wilson Boulevard, Arlington, Virginia.

Respondent Rubins Discount Carpet Center of Maryland, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5904 Riggs Road, Chillum, Maryland.

Respondent Rubins Discount Carpet Center of Pennsylvania, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at the Northwest Corner of Third and Race Streets, Philadelphia, Pennsylvania.

Respondent Rubins Discount Carpet Center of New Jersey, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1105 Linden Street, Camden, New Jersey.

Respondents Milton Rubin, Alvin Rubin and Stanley Greenberg are officers of the corporate respondents. They formulate, direct and control the policies, acts and practices of the corporate respondents. The business address of respondents Milton Rubin and Alvin Rubin is the Northwest Corner of Third and Race Streets, Philadelphia, Pennsylvania.

The business address of respondent Stanley Greenberg is 3185 Wilson Boulevard, Arlington, Virginia.

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

ORDER

I

It is ordered, That respondents Rubins Discount Carpet Center of Virginia, Inc., a corporation, and Rubins Discount Carpet Center of Maryland, Inc., a corporation, and Rubins Discount Carpet Center of Pennsylvania, Inc., a corporation, and Rubins Discount Carpet Center of New Jersey, Inc., a corporation, their successors and assigns, and their officers, and Milton Rubin, Alvin Rubin, and Stanley Greenberg, individually and as officers of said corporations and respondents' agents, representatives, and employees, directly or through any corporate, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

(b) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise,

customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

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

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

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

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

6. Representing, directly or by implication, orally or in writing, that carpet dealers or other floor covering

establishments cannot purchase carpets, floor coverings or any other merchandise at the same prices or from the same sources which are available to respondents.

II

It is further ordered, That respondents, Rubins Discount Carpet Center of Virginia, Inc., a corporation, and Rubins Discount Carpet Center of Maryland, Inc., a corporation, and Rubins Discount Carpet Center of Pennsylvania, Inc., a corporation, and Rubins Discount Carpet Center of New Jersey, Inc., a corporation, their successors and assigns, and their officers, and Milton Rubin, Alvin Rubin, and Stanley Greenberg, individually and as officers of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

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

B. Falsely and deceptively advertising textile products by:

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

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

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

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

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

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

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

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

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

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

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

It is further ordered, That 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 of their compliance with this order.

IN THE MATTER OF

ALBERT L. UPPERCO TRADING AS BEAUTY-RAMA
CARPET CENTERS

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

Docket C-2398. Complaint, May 2, 1973—Decision, May 2, 1973.

Consent order requiring a Baltimore, Maryland, seller, distributor and installer of carpets and floor coverings, among other things to cease misrepresenting various sales offers; disparaging any advertised products; failing to maintain adequate records; misrepresenting the nature or extent of services provided by respondent; misrepresenting guarantees; misrepresenting prices; failing to furnish copies of contracts in the language, *e.g.*, Spanish, as is principally used in oral sales presentations; failing to notify customers of their right to a three-day, cooling-off period, during which time they may cancel any sales contract; misbranding or falsely or deceptively advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Albert L.

1340

Complaint

Upperco, an individual trading and doing business as Beauty-Rama Carpet Centers, a sole proprietorship, hereinafter referred to as respondent, has violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Albert L. Upperco is an individual trading and doing business as Beauty-Rama Carpet Centers, with his principal office and place of business located at 818 Gorsuch Avenue, Baltimore, Maryland.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

COUNT I

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

PAR. 3. In the course and conduct of his business as aforesaid, respondent now causes, and for some time last past has caused, his said merchandise, when sold, to be shipped from his places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintains and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his carpeting and floor coverings, respondent has made, and is now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of his salesmen to prospective purchasers with respect to his products and services.

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

Complaint

82 F.T.C.

Carpeting

TAKE YOUR PICK — ALL THE CARPET YOU NEED — WALL-TO-WALL
For Your Living Room, Dining Room, Stairway, Landing and Hall
5 AREAS REGARDLESS OF SIZE

One Low Price \$139

100% NYLON PILE

* * * * *

ACRILAN DEEP PLUSH

\$269 Includes 5 Areas

Regardless of Size

* * * * *

WE DO OUR OWN INSTALLATION

BY MASTER CRAFTSMEN

* * * * *

NEW! MIRACLE CARPETING

NOW AVAILABLE

GENUINE BEAUTY-RAMA'S

15-YEAR ALVIN

15-YEAR GUARANTEE

Beauty-Rama Carpet Centers

guarantees this NEW MIRACLE II ALVIN Carpet

to Wear 15 years on a pro-rated

monthly useage replacement basis

* * * * *

Another Beauty-Rama Carpet Value

3 FULL ROOMS

\$133 Quality Wall-to-Wall

Nylon Pile Carpet

Completely installed including padding

Covers up to 270 sq. ft. — Enough for an

11 × 14 living room, 8 × 10 dining room, and

den or hall or stairway.

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondent's salesmen to customers and prospective customers, respondent has represented, and is now representing, directly or by implication, that:

1. Respondent is making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

2. Certain of respondent's products are unconditionally guaranteed for various periods of time, such as fifteen (15) years.

3. Respondent or his employees regularly install carpeting and floor coverings sold by respondent.

PAR. 6. In truth and in fact:

1. Respondent's offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondent or his salesmen, who make little or no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondent, individually or through his salesmen, attempts to sell and frequently does sell the higher priced carpeting.

2. Respondent's carpeting and floor coverings are not unconditionally guaranteed for the period of time orally represented by respondent's salesmen. To the contrary, such written guarantees as he has provided to his customers were subject to conditions and limitations not disclosed in respondent's representatives' oral representations, and in a substantial number of instances customers did not receive a written guarantee.

3. Respondent or his employees do not regularly install carpeting sold by respondent. Instead, respondent arranges for the installation of carpeting by independent carpeting installers.

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 his business, and in furtherance of a sales program for inducing the purchase of his carpeting and floor coverings, respondent and his salesmen or 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 Six, above, respondent or his 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 course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and his failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

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

PAR. 11. Respondent is now, and for some time last past has 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 has 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 has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 12. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

PAR. 13. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 14. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in The Washington Post newspaper published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 15. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent has falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

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

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

advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

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

PAR. 16. The acts and practices of respondent as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its

complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Albert L. Upperco is an individual trading and doing business as Beauty-Rama Carpet Centers, with his office and principal place of business located at 818 Gorsuch Avenue, Baltimore, Maryland.

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

ORDER

I

It is ordered, That respondent Albert L. Upperco, an individual trading and doing business as Beauty-Rama Carpet Centers, or under any other name or names, and respondent's agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Disparaging, in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, orally or in writing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each

advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. the cost of publishing each advertisement including the preparation and dissemination thereof;
- b. the volume of sales made of the advertised product or service at the advertised price; and
- c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

6. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

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

8. Representing, orally or in writing, directly or by implication, that respondent or his employees install carpet or other floor coverings, or misrepresenting, in any manner, the nature or extent of services provided by respondent.

9. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

10. 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 is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and 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 bold face 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.

11. 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 bold face 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.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

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

IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE SELLER OR IF THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

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)

11. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

12. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

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

14. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

15. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

16. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

17. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, That nothing contained in Part I of this

order shall relieve respondent of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondent can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

II

It is further ordered, That respondent Albert L. Upperco, an individual trading and doing business as Beauty-Rama Carpet Centers, or under any other name or names, and respondent's agents, representatives and employees, successors and assigns, directly or through any corporation or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale in commerce, or the importation into the United States of any textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

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

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections

4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

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

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

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

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

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

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

It is further ordered, That respondent shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store

solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in his business organization such as dissolution, assignment, incorporation, partnership, sale or any other change which may effect compliance obligations arising out of this order.

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

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

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

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

IN THE MATTER OF
IRVING M. BALDERSON, ET AL.
TRADING AS
NATIONAL CARPET SERVICE COMPANY, ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2399. Complaint, May 2, 1973—Decision, May 2, 1973.

Consent order requiring two individuals trading as two different companies located in Fairmount Heights, Maryland, engaged in the selling, distribution, and installation of carpeting and floor coverings, among other things to cease misrepresenting various sales offers; failing to maintain adequate records; misrepresenting the prices, terms or conditions under which respondents supply separate padding and provide installation of floor coverings; misrepresenting guarantees; misrepresenting the quantity and qualities of stock on hand; misrepresenting the word "free" with respect to merchandise offered; and failing to inform customers of their right-to-cancel any sales contract within three (3) business days.

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 Irving M. Balderson and Steven C. Goldsmith, individually, trading and doing business as National Carpet Service Company, and Lanham Carpets, 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. Respondents Irving M. Balderson and Steven C. Goldsmith are individuals trading and doing business as National Carpet Service Company and Lanham Carpets, with their principal office and place of business located at 1504 62nd Avenue, Fairmount Heights, Maryland. They formulate, direct and control, and have cooperated together in the performance of the acts and practices of their aforesaid business, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

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

aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

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

3 ROOMS WALL TO WALL CARPETING
\$129
INCLUDES:

- Up to 270 sq. ft.
- Padding and installation included
- 100% continuous filament nylon pile
- Installation guaranteed for the life of the carpeting

* * * * *

FREE!
ELECTRIC CARPET BROOM BY LEWYT
WITH PURCHASE OF \$129 OR MORE
WALL TO WALL CARPETING!

* * * * *

WE GIVE FREE S&H GREEN STAMPS
WITH EVERY PURCHASE

* * * * *

SPECIAL DISCOUNT PRICES
On all shags, sculptured, tip shears,
tweeds, and plush pile carpets.
Hundreds of decorator colors
and patterns to choose from.

* * * * *

TERMS AVAILABLE
FREE SHOP AT HOME SERVICE
NO OBLIGATION

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import

and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

2. By and through the use of the words "Padding and installation included" and other words of similar import and meaning, not set out specifically herein, that all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

3. Certain of respondents' products are unconditionally guaranteed.

4. By and through the use of the words "Hundreds of decorator colors and patterns to choose from," and other words of similar import and meaning not set out specifically herein, that the advertised carpeting is available in hundreds of different colors and patterns from which the prospective purchaser may choose.

5. Purchasers of the advertised carpeting will receive a "free" electric broom and "free" S&H Green Stamps.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen, who make little or no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced carpeting.

2. A substantial portion of the carpeting advertised by the

respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting.

3. Respondents' carpeting and floor coverings are not unconditionally guaranteed. To the contrary, such guarantee as are available are subject to numerous substantial conditions and limitations.

4. The advertised carpeting is not available in hundreds of different colors and patterns from which the prospective purchaser may choose. To the contrary, respondents have available only very limited selection of colors and patterns.

5. Purchasers of respondents' carpeting do not receive a free electric broom and free S&H Green Stamps. To the contrary, the cost of the "free" gifts is added to and regularly included in the selling price of the merchandise sold to the customer.

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 furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents and their salesmen or 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 Six, above, respondents 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 aforesaid business, and in connection with the representations set forth in Paragraph Four above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of the respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the

understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service 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 their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondents Irving M. Balderson and Steven C. Goldsmith are individuals trading and doing business as National Carpet Service Company and Lanham Carpets, with their office and principal place of business located at 1504 62nd Avenue, Fairmount Heights, Maryland.

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 Irving M. Balderson and Steven C. Goldsmith, individually, trading and doing business as National Carpet Service Company, and Lanham Carpets, or under any other name or names, and respondents' agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Making representations, orally or in writing, directly or by implication, purporting to offer merchandise for sale when the purpose of the representation is not to sell the

offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, orally or in writing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

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

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

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

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

6. Representing, orally or in writing, directly or by implication, that a stated price for carpeting or floor coverings includes the cost of a separate padding and the installation of such padding and carpeting thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices, terms, or conditions under which respondents supply separate padding and provide installation in connection with the sale of floor covering products.

7. Representing, orally or in writing, directly or by implication, that any product or service is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully

perform all of their obligations and requirements under the terms of each such guarantee.

8. Representing, directly or indirectly, orally or in writing, that respondents have "hundreds" or any other number of patterns and colors of carpeting in stock unless respondents have the stated number of patterns or colors in stock and available for immediate sale and delivery; or misrepresenting, in any manner, the colors, patterns, size, kind or quantity of carpeting in stock and available for sale, delivery or installation.

9. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or kitchen carpeting or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

10. Representing, directly or indirectly, orally or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

11. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

12. Representing, directly or indirectly, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

13. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free"

offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of its sales of the product or service, in the same amount, size or quality, in the area.

14. Representing, directly or indirectly, orally or in writing, that a product or service is being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

15. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

16. 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 is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and 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 bold face 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.

17. 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 bold face 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.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

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

IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE SELLER OR IF THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

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)

18. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

19. Including any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the

buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

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. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

22. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

23. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

24. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

25. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

It is further ordered, That each of respondents do forthwith cease and desist from disseminating, or causing the

dissemination of, any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

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

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

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

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

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale of any product, 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 each of the individual respondents

named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

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

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

Docket 8873. Complaint, December 20, 1971—Decision, May 8, 1973.

Order requiring a Terre Haute, Indiana, seller of magazine subscriptions and other publications, as well as three subsidiaries, among other things to cease misrepresenting travel opportunities available to their representatives or solicitors; misrepresenting the terms and conditions or nature of employment; misrepresenting earnings of representatives or solicitors; misrepresenting the terms and conditions of any guarantees; failing to inform customers of their right to a three-day cooling-off period; and furnishing means and instrumentalities of misrepresentation or deception.

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 LRS, Inc., Local Readers' Service, Inc., Leisure Readers' Service, Inc., Literary Readers' Service, Inc., corporations, and Mary E. Harrington, and Richard Y. Long, individually and as officers 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 LRS, Inc., is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Indiana, with its principal office and place of business located at 1331 Ohio Street in the city of Terre Haute, State of Indiana.

Respondent Local Readers' Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 1331 Ohio Street in the city of Terre Haute, State of Indiana. It is a wholly-owned subsidiary of respondent LRS, Inc.

Respondent Leisure Readers' Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 1331 Ohio Street in the city of Terre Haute, State of Indiana. It is a wholly-owned subsidiary of respondent LRS, Inc.

Respondent Literary Readers' Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business at 1331 Ohio Street in the city of Terre Haute, State of Indiana. It is a wholly-owned subsidiary of respondent LRS, Inc.

Respondent Mary E. Harrington, and Richard Y. Long are officers of the corporate respondents. Their address is the same as that of the corporate respondents.

The aforesaid individual respondents cooperate and act together in the formulation, direction and control of the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are engaged in the sale of magazine subscriptions and other publications to the purchasing public by either of two methods which are commonly referred to as "cash subscription" and "two-payment."

Respondents enter into business arrangements with certain publishers or distributors of magazines and other publications whereby the publishers or distributors agree to accept and fill orders for designated magazines or other publications sold by respondents. The publishers or distributors generally require that the magazines or other publications be sold for a designated amount and that respondents forward an agreed upon amount to the publisher or distributor thereof.

Pursuant to such arrangements the respondents solicit and sell to the purchasing public subscriptions to such magazines.

PAR. 3. In the course and conduct of their business of selling magazine subscriptions pursuant to subscription contracts, as

aforesaid, respondents have entered into contractual arrangements with publishers or distributors of magazines whereby respondents are authorized to sell certain magazine subscriptions at designated selling prices and to pay designated amounts to said publishers or distributors as payment for said subscriptions. Respondents are thereby given authority to sell subscriptions to some but not all magazines and other publications.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents enter, and have entered, into agreements with individuals known as "crew managers" who in turn employ or hire "sales agents," "solicitors," or other representatives to sell said magazines.

Acting through their said crew chiefs and solicitors, respondents place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sale methods whereby members of the general public are contacted by door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts with respondents which provide for the purchase of magazines or other publications and payment therefor usually on a cash or two-payment basis.

Respondents also provide crew managers with credentials, sales contract forms, magazine lists and other printed materials some of which bear the name and address of the corporate respondents. Said printed materials are placed in the hands of respondents' sales solicitors for use in the solicitation of magazine subscriptions.

The subscription contracts, when signed by the subscriber, are thereafter returned by the sales solicitor and the crew manager to the respondents who place subscription orders with the appropriate publishers and distributors for magazines and other publications respondents are authorized to sell.

In the manner aforesaid, respondents, directly or indirectly, through said crew managers control, furnish the means, instrumentalities, services and facilities for, condone, approve and accept the pecuniary benefits flowing from the acts, practices and policies hereinafter set forth, of said crew managers and sales solicitors, hereinafter collectively referred to as respondents' representatives or solicitors.

PAR. 5. In the course and conduct of their business and in the

manner aforesaid, respondents through their representatives or solicitors, who travel from one area to another, solicit subscriptions for magazines in various States of the United States. Respondents transmit and receive in commerce the aforementioned printed materials used in the solicitation and sale of magazine subscriptions. The subscription contracts and money are sent by said representatives or solicitors from various states to respondents' place of business in the State of Indiana and are then forwarded by respondents to various publishers or distributors, many of whom are located in states other than the State of Indiana. Respondents thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondents, in the course and conduct of their business as aforesaid, have disseminated, and now disseminate or cause to be disseminated, classified advertisements in newspapers of general and interstate circulation and in newspapers throughout the United States, and have made statements and representations respecting pay and working conditions, designed and intended to induce individuals to apply as representatives or solicitors to sell magazine subscriptions on the behalf of respondents.

Among and typical of such representations, but not all inclusive thereof, are the following:

1. * * * to travel United States, Hawaii, Alaska and return.
2. * * * this is not residential soliciting.
3. Immediate cash draw-guarantee \$125 week, bonus and commission.
4. \$400 month salary to start.
5. * * * expense account * * *

In the aforesaid manner, the respondents have represented, and are now representing, directly or by implication, that:

1. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will travel on a planned itinerary to various large cities and resort areas throughout the United States.
2. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will not be employed to solicit magazine subscriptions door-to-door.
3. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will be guaranteed \$125 per week in earnings.

4. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will earn \$400 per month.

5. Respondents will pay the expenses of persons who answer respondents' advertisements and who become representatives or solicitors for respondents.

PAR. 7. In truth and in fact:

1. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents do not travel on a planned itinerary to various large cities and resort areas throughout the United States.

2. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents are employed to solicit magazine subscriptions door-to-door.

3. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents are not guaranteed \$125 per week in earnings.

4. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents do not earn \$400 per month.

5. Respondents do not pay the expenses of persons who answer respondents' advertisements and who become representatives or solicitors for respondents.

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

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their magazine subscriptions, respondents and respondents' representatives or solicitors have represented, and now represent, directly or by implication, that:

1. Respondents are authorized to sell subscriptions for and are able to deliver or cause the delivery of all magazines for which they sell subscriptions and accept payments.

2. Respondents' representatives or solicitors are participants in a "contest" working for prizes and awards and are not solicitors working for money compensation.

3. Respondents' representatives or solicitors are employed by or for the benefit of a charitable or non-profit organization.

4. Respondents' representatives or solicitors are employed by or affiliated with programs sponsored by a government agency, the purpose of which is to provide assistance to underprivileged groups or persons.

5. Respondents' representatives or solicitors are competing for college scholarship awards.

6. Respondents' representatives or solicitors are college students working their way through school.

7. Respondents' representatives or solicitors are "bonded" and that such "bonding" insures their honesty and integrity.

8. Respondents have placed a bond with the Central Registry of the Magazine Publishers Association which guarantees the fulfillment of each and every magazine subscription order solicited by respondents' representatives or solicitors.

9. Respondents guarantee the delivery of magazines for which they sell subscriptions and accept payments.

10. The money paid by the subscriber to the respondents' representative or solicitor at the time of the sale is the total cost of the subscription.

11. Magazines purchased by subscribers will be distributed to various schools and institutions as gifts or contributions.

PAR. 9. In truth and in fact:

1. Respondents are not authorized to sell subscriptions for and are not able to deliver or to cause the delivery of all magazines for which their representatives or solicitors sell subscriptions and accept payments. In many instances, respondents' representatives or solicitors sell subscriptions for magazines which respondents are not authorized by the publisher or distributor thereof to sell, and consequently, respondents are unable to deliver or to cause the delivery of these magazines, for which they have accepted payments from subscribers.

2. Respondents' representatives or solicitors work for money compensation and are not participants in a "contest" working for prizes and awards. The use by respondents and their representatives or solicitors of credentials and promotional materials identifying such representatives or solicitors as participants in a contest is a spurious device which enables their representatives or solicitors to utilize a personal sympathy appeal in the sale of subscriptions.

3. Respondents' representatives or solicitors are not employed by or for the benefit of a charitable or non-profit organization.

4. Respondents' representatives or solicitors are not employed by or affiliated with programs sponsored by a government agency the purpose of which is to provide assistance to underprivileged groups or persons.

5. Respondents' representatives or solicitors are not

competing for college scholarship awards.

6. In a substantial number of instances, respondents' representatives or solicitors are not college students working their way through college.

7. Respondent representatives or solicitors are not "bonded;" and there is no assurance for their honesty and integrity.

8. The bond which respondents have filed with the Central Registry of the Magazine Publishers Association does not guarantee the fulfillment of each and every magazine subscription sold by or through respondents.

9. Respondents do not guarantee the delivery of magazines for which they sell subscriptions and accept payments and, once the order is submitted to the publisher or distributor, no further effort is made by respondents to insure such delivery.

10. In a substantial number of instances, the money paid by the subscriber to the respondents' representatives or solicitor at the time of the sale is not the total cost of the sale, and the subscriber is required to pay an additional sum of money before his subscription will be entered as ordered.

11. Magazines purchased by subscribers are not distributed to various schools and institutions as gifts or contributions.

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

PAR. 10. In the further course and conduct of their business as aforesaid, where respondents have received payment for subscriptions to magazines they are not authorized to sell and are not able to deliver or cause to be delivered, they have also, in a substantial number of instances:

1. Failed to notify subscribers, after subscription orders have been received at their principal office and place of business, that said magazines cannot be delivered.

2. Required purchasers to subscribe to substitute magazines without offering them the option to receive a full refund of the money paid for the initial subscription.

3. Failed to refund to subscribers the money they have paid for subscriptions to such magazines.

4. Failed to answer, or to answer promptly, inquiries by or on behalf of subscribers concerning non-delivery of such magazines.

Therefore, the aforesaid acts and practices were, and are, unfair practices and are false, misleading and deceptive.

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

aforesaid, where respondents have received payment for subscriptions to magazines they are in fact authorized to sell and are able to deliver or cause to be delivered, they have, in many instances, failed to deliver or cause to be delivered such magazines within a reasonable period of time.

Therefore, the aforesaid acts and practices were, and are, unfair practices and are false, misleading and deceptive.

PAR. 12. In the further course and conduct of their business as aforesaid, in instances where the respondents' representatives or solicitors have appropriated money paid by subscribers to their own use, respondents have either failed to refund to subscribers the money said subscribers have paid for subscriptions to magazines or have failed to enter the subscription as ordered by said subscribers.

Therefore, the aforesaid acts and practices were, and are, unfair practices and are false, misleading and deceptive.

PAR. 13. In the further course and conduct of their business as aforesaid, respondents, through their representatives and solicitors, have misrepresented, and are now misrepresenting, the cost, number of issues and duration of magazine subscriptions.

Therefore, the aforesaid acts and practices were, and are, unfair practices and are false, misleading and deceptive.

PAR. 14. 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 magazine subscriptions.

PAR. 15. By and through the use of the aforesaid acts and practices, respondents place in the hands of the crew managers, sales agents, representatives and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 16. The use by respondents of the aforesaid false, misleading, deceptive and unfair representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of magazine subscriptions from respondents.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the

public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondents LRS, Inc., Local Readers' Service, Inc., Leisure Readers' Service, Inc., and Literary Readers' Service, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Indiana, with their principal place of business located at 1331 Ohio Street in the city of Terre Haute, State of Indiana.

Respondent Mary E. (Harrington) Chalmers is an officer of said corporations. She formulates, directs and controls the policies, acts and practices of the corporate respondents, and her address is the same as that of the corporate respondents.

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 LRS, Inc., Local Readers' Service, Inc., Leisure Readers' Service, Inc., and Literary Readers' Service, Inc., corporations, and their officers, and Mary E. (Harrington) Chalmers, individually and as an officer of said corporations, and respondents' agents, representatives and employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, or distribution of magazines, magazine subscriptions or other products or the sale, solicitation or acceptance of subscriptions for magazines or other publications or monies paid therefor, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, to prospective solicitors and solicitors that they will travel on a planned itinerary to various large cities and resort areas throughout the United States and foreign countries; or misrepresenting, in any manner, the travel opportunities available to their representatives or solicitors.

2. Representing, directly or by implication, to prospective solicitors or solicitors that they will serve in any capacity other than as magazine subscription solicitors selling magazines on a door-to-door basis; or misrepresenting, in any manner, the terms, conditions, or nature of such employment, or the manner or amount of payment for such employment.

3. Representing, directly or by implication, to prospective solicitors and solicitors that they will earn or receive \$125 per week or \$400 per month or any other stated or gross amount; or representing, in any manner, the past earnings of respondents' representatives or solicitors, unless in fact the past earnings represented have actually been received by a substantial number of respondents' representatives or solicitors and accurately reflect the average earnings of such representatives or solicitors.

4. Representing, directly or by implication, to prospective solicitors or solicitors, that respondents will pay all, or any part of, the expenses of such solicitors unless such is the fact; or misrepresenting, in any manner, the terms or conditions of employment as a solicitor for respondents.

5. Failing clearly and unqualifiedly, to reveal during the course of any contact or solicitation of any prospective employee, sales agent or representative, whether directly or indirectly, or by written or printed communications, or by newspaper or periodical advertising, or person-to-person, that such prospective employee, sales agent or representative will be employed to solicit the sale of magazine subscriptions.

6. Soliciting or accepting subscriptions for magazines or other publications which respondents have no authority to sell or which respondents cannot promptly deliver or cause to be delivered.

7. Representing, directly or by implication, that respondents' representatives or solicitors are participants in a contest working for prize awards and are not solicitors working for money compensation; or misrepresenting, in any manner, the status of their sales agents or representatives or the manner or amount of compensation they receive.

8. Representing, directly or by implication, that respondents' representatives or solicitors are employed by or for the benefit of any charitable or non-profit organization; or misrepresenting, in any manner, the identity of the solicitor or of his firm or of the business they are engaged in.

9. Representing, directly or by implication, that respondents' representatives or solicitors are employed by or affiliated with programs sponsored by a government agency, the purpose of which is to provide assistance to underprivileged groups or persons.

10. Representing, directly or by implication, that respondents' representatives or solicitors are competing for college scholarship awards.

11. Representing, directly or by implication, that respondents' representatives or solicitors are college students working their way through school, unless such is the fact.

12. Representing, directly or by implication, that respondents' sales agents or representatives have been or are bonded or making any reference to bonding, unless such sales agents or representatives have been bonded by a recognized bonding agency, and any payments made pursuant to such bonding arrangement would accrue

directly to the benefit of subscribers ordering subscriptions from respondents' representatives or solicitors; or misrepresenting, in any manner, the nature, terms or conditions of any such bond.

13. Representing, directly or by implication, that respondents have a legal arrangement with any independent third party which insures the placement and fulfillment of each and every magazine subscription order; or misrepresenting, in any manner, the nature, terms and conditions of any such arrangement.

14. Representing, directly or by implication, that respondents guarantee the delivery of magazines for which they sell subscriptions and accept payments, without clearly and conspicuously disclosing the terms and conditions of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

15. Representing, directly or by implication, that the money paid by a subscriber to the respondents' representative or solicitor at the time of the sale is the total cost of the subscription in instances where the subscriber will be required to remit an additional amount in order to receive the subscription as ordered.

16. Representing, directly or by implication, that magazines purchased by subscribers will be distributed to various schools and institutions as gifts or contributions.

17. Misrepresenting the number and name(s) of publications being subscribed for, the number of issues and duration of each subscription and the total price for each and all such publications, or misrepresenting in any way the terms and conditions of the sale.

18. Utilizing any sympathy appeal to induce the purchase of subscriptions, including but not limited to: illness, disease, handicap, race, financial need, or other personal status of the solicitor, past, present or future; or misrepresenting, directly or by implication, the solicitor's eligibility for any benefit offered by respondents; or representing that earnings from subscription sales will benefit certain groups of persons such as students or the under-privileged, or will help charitable or civic groups.

19. Failing clearly and conspicuously without any qualification, orally or in writing, to reveal at the initial contact or solicitation of a purchaser or prospective purchaser, whether directly or indirectly, or by written or

printed communications, or person-to-person, that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the time of such contact or solicitation.

20. Failing to answer and to answer promptly inquiries by or on behalf of subscribers regarding subscriptions placed with respondents.

21. Failing within thirty days from the date of sale of any subscription to enter each magazine subscription with publishers for magazines which respondents are authorized by the publisher or distributor thereof to sell; *Provided, however,* That in those sales in which an additional payment by the subscriber is required, the subscription shall be entered within thirty days of the receipt of the final payment, but in no event shall any subscription be entered later than sixty days from the date of sale.

22. Failing within thirty days from the date of sale of any subscription to notify a subscriber of respondents' inability to place all or a part of a subscription and to deliver each of the magazines or other publications subscribed for; and to offer each such subscriber the option to receive a full refund of the money paid for such subscription or part thereof which respondents are unable to deliver or to substitute other publications in lieu thereof.

23. Failing within fourteen days from the receipt of notification of a subscriber's election as provided in Paragraph 22 hereof, to make the required refund or to enter the subscription with publishers, as elected by the subscriber.

24. Failing to give clear and conspicuous oral and written notice to each subscriber that upon written request said subscriber will be entitled to a refund of all monies paid if he does not receive the magazine or magazines subscribed for within 120 days of the date of the sale thereof.

25. Failing to refund all monies to subscribers who have not received magazines subscribed for through respondent within 120 days from the date of the sale thereof or to offer the subscribers the right to substitute one or more magazines or the extension of the subscription period for a magazine already selected, at the option of the subscribers, upon written request by such subscribers.

26. Failing to arrange for the delivery of publications already paid for or to promptly refund money on a pro rata

basis for all undelivered issues of publications for which payment has been made in advance or to offer the subscriber the right to substitute one or more magazines or the extension of the subscription period for a magazine already selected, at the option of the subscriber.

27. Failing to furnish to each subscriber at the time of sale of any subscription a duplicate original of the contract, order or receipt form showing the date signed by the customer and the name and address of the sales representative or solicitor together with the respondent corporation's name, address and telephone number and showing on the same side of the page the exact number and name(s) of the publications being subscribed for, the number of issues and duration of each subscription and the total price for each and all such publications.

28. Failing to:

(a) Inform orally all subscribers and to provide in writing in all subscription contracts that the subscription may be cancelled for any reason by notification to respondents in writing within three business days from the date of the sale of the subscription.

(b) Refund immediately all monies to (1) subscribers who have requested subscription cancellation in writing within three business days from the sale thereof, and (2) subscribers showing that respondents' solicitations or performance were attended by or involved violation of any of the provisions of this order.

29. Furnishing, or otherwise placing in the hands of others, the means or instrumentalities by or through which the public may be misled or deceived in the manner or as to the things prohibited by this order.

It is further ordered, That:

(a) respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future crew managers, and other supervisory personnel engaged in the sale or supervision of persons engaged in the sale of respondents' products or services;

(b) respondents herein require that each person so described in Paragraph (a) above to clearly and fully explain the provisions of this decision and order to all sales agents, representatives and other persons engaged in the sale of respondents' products or services;

(c) respondents provide each person so described in Paragraphs (a) and (b) 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;

(d) respondents inform each of their present and future crew managers, sales agents, representatives and other persons engaged in the sale of respondents' products or services that the respondents shall not use any third party, or the services of any third party if such third party will not agree to so file notice with the respondents and be bound by the provisions of the order.

(e) if such third party will not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not use such third party, or the services of such third party to solicit subscriptions;

(f) respondents inform the persons described in Paragraphs (a) and (b) above that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

(g) respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each said person described in Paragraphs (a) and (b) above conform to the requirements of this order;

(h) respondents discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own the deceptive acts or practices prohibited by this order; and that

(i) respondents upon receiving information or knowledge from any source concerning two or more bona fide complaints prohibited by this order against any of their sales agents or representatives during any one-month period will be responsible for either ending said practices or securing the termination of the employment of the offending sales agent or representative.

It is further ordered, That respondents herein shall notify the Commission at least 30 days prior to any proposed change in the structure of 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 respective corporation which may affect compliance obligations arising out of this order.

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

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

IN THE MATTER OF
ARA SERVICES, INC.

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

Docket C-2400. Complaint, May 9, 1973—Decision, May 9, 1973.

Consent order requiring a Philadelphia, Pennsylvania, vending business and wholesale distributor of periodicals and paperback books, among other things to divest the stocks and assets in various areas throughout the United States. Respondent is further prohibited from acquiring any corporate stock or assets of any firms engaged in full-line vending in any Standard Metropolitan Statistical Area [SMSA], or county not within an SMSA for a period of ten (10) years without prior Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is violating the provisions of Section 7 of the Clayton Act, as amended (U.S.C. Title 15, Section 18), through the acquisition of the stock or assets of various corporations described herein, and that respondent has engaged in unfair methods of competition, acts and practices through these and various other acquisitions in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45), and believing that a proceeding in this regard will be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act and Section 5 of the Federal Trade Commission Act, charging as follows:

I

DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

a. "vending industry" — consists of the distribution and sale by outside contractors of food, beverages and tobacco products through automatic, coin-operated, merchandise vending machines;

b. "vendor"—a person, partnership or corporation engaged in the distribution and sale of products through vending machines;

c. "full-line vending" — vending which consists principally of the distribution and sale of a substantially complete line of food, beverage and tobacco products at locations which require such service. "Full-line vending" is exclusive of "street-vending." Companies which are engaged in full-line vending are known as "full-line vendors;"

d. "street-vending" — vending which consists principally of the distribution and sale of a single product or of a limited line of food, beverage and tobacco products at locations which do not require full-line service. Such locations are known as "street accounts." Companies or establishments engaged in street vending are known as "street vendors;"

e. "manual food service" — manual food service and industrial catering (either in combination with vending machines or separately) at industrial, institutional, hospital or educational facilities, or at transportation terminals. This includes manual in-plant feeding through snack bars, cafeterias and dining rooms at these locations, and mobile industrial catering, but excludes public eating places such as public restaurants, public cafeterias and fast-food service establishments open to the public.

II

ARA SERVICES, INC.

2. Respondent, ARA Services, Inc., formerly Automatic Retailers of America, Inc., is a corporation organized in February 1959, *sub nomine* Davidson Automatic Merchandising Co., Inc., and existing under the laws of the State of Delaware. Its principal office is located at Lombard at 25th Street, Philadelphia, Pennsylvania. The executive offices are located at 10889 Wilshire Boulevard, Los Angeles, California.

3. Respondent and its subsidiaries and affiliates (collectively designated hereinafter as "ARA") are engaged in the vending business, in full-line vending, and in a variety of manual food service operations, throughout the United States, and in Canada and Puerto Rico. ARA is also a major wholesale distributor in the United States of periodicals and paperback books for resale

through newsstands and other retail outlets. ARA is also engaged in supplying retailer promotional services and professional management and technical consulting services, including professional construction contract management and consulting services.

4. ARA's total revenue, net income and total assets have increased uninterruptedly in each year at least since 1962. In 1966, the year preceding the first of the acquisitions described in Paragraph 14 below, ARA's consolidated domestic sales were \$300,338,000, net income after taxes was \$7,748,500, and total assets at year end were \$128,180,500. In 1970, ARA's consolidated domestic sales were \$648,399,000, net income after taxes was \$18,610,000, and total assets at year end amounted to \$285,707,000.

5. ARA is the largest supplier of vending services in the United States, and currently conducts vending service business in all but a few of the fifty states, and in the District of Columbia. ARA's vending sales in 1966 were approximately \$164 million; in 1967, \$199 million; in 1968, \$248 million; and 1969, \$286 million. As a result, ARA is and, since August 1967, has been capable of growth within or geographic expansion into the vending industry in any section of the country without acquiring existing vending operations. During these years, ARA has increased the size and geographic scope of its vending operations largely by means of acquisitions.

6. At the time of acquiring the firms described in Paragraph 14 below, ARA was either an existing operator or one of the most likely entrants into the vending industry in the section or sections of the country in which the acquired firms each operated.

7. At least since August 1967, ARA has purchased, received and distributed a substantial amount of goods in interstate commerce, and has been and is engaged generally in interstate commerce.

III

TRADE AND COMMERCE

8. The vending industry is large and is rapidly growing. In 1967, the industry's sales were approximately \$2 billion.

9. The vending industry has been characterized by numerous acquisitions by and consolidations among vending firms. Between 1959 and 1963, in excess of 600 acquisitions of vending

firms were made by ten large United States vending firms. Since 1964, seventeen of the largest vending firms have acquired approximately 500 additional vending firms in the United States.

10. ARA acquired approximately 189 vending firms during the 1959–1963 period, and acquired approximately 140 vending firms during the 1964–1970 period.

11. Although the vending industry more than doubled in size between 1958 and 1967, the industry has undergone and is undergoing a trend toward concentration. In 1958, the industry was fragmented. By 1968, largely as a result of the acquisitions described in Paragraphs 9 and 10, three firms held approximately 30 percent of the industry's sales in the United States. ARA's 1967 share of the national sales was approximately 10 percent.

12. Full-line vendors and street vendors comprise two distinct classes of vendors. Street vendors are not equipped to serve full-line accounts and generally do not compete for all or even a portion of the business of full-line accounts.

13. The largest portion of the sales of full-line vendors is made to business and industrial accounts, which generally are regarded as "choice accounts." Such accounts generally are let on a bid bases. Among the factors which often determine which full-line vending company is to be the successful bidder on choice-account business are: the vendor's full-line vending capabilities; overall size and reputation of the vendor; inter-company contacts between high-level officials; and business reciprocity.

IV

THE ACQUISITIONS

14. Since August 31, 1967, ARA has acquired most or all of the stock or vending business assets of approximately 98 corporate and non-corporate firms described in the attached Table I, which is fully incorporated herein and made a part hereof. Table I describes each such acquisition by date of acquisition, name and location of acquired firm, locations of acquired vending machines, both generally and by standard metropolitan statistical areas (SMSA). It also indicates whether ARA was operating vending machines in any counties in which any acquired firm was operating vending machines at the time of the acquisition. Most of these firms operated full-line or

substantially full-line vending businesses at the time of the acquisition by ARA, and competed for business and industrial accounts.

15. All of the corporations and non-corporate entities designated in Paragraph 14 regularly purchased and received a substantial amount of goods in interstate commerce, and were engaged generally in interstate commerce at the time that they were acquired by ARA.

16. Many of the acquired firms designated in Paragraph 14 operated manual food services which ARA acquired at the same time as it acquired the vending operations of those firms, and which ARA continued to operate. These acquisitions of manual food service operations tended to increase ARA's power in vending.

17. The anticompetitive effects of the acquisitions made by ARA in the following areas are alleged as exemplifying the effect of a substantial lessening of competition which has occurred or which may occur in those areas in which ARA acquired the firms designated in Paragraph 14:

a. The Fort Wayne, Indiana, area, in which on January 12, 1968, ARA acquired both Kinney-Bennett-Kinsey, Inc. and Select Foods, Inc. Kinney-Bennett-Kinsey ranked first in vending sales in that area. Prior to the acquisitions, ARA was present in the market as ARA Services of Ft. Wayne, Inc. The following table describes the approximate market shares of these three firms separately and, in the row entitled "Total ARA," shows the market share of ARA resulting from the acquisitions:

Company	Full-Line Vending	
	1969 sales in thousands of dollars	Percent of market's sales, 1969
ARA Services of Ft. Wayne, Inc.	\$ 773	10.7
Kinney-Bennett- Kinsey, Inc.	3,219	44.7
Select Foods, Inc.	1,707	23.7
Total ARA	\$5,699	79.2

b. The Denver, Colorado area, in which ARA acquired both Automatic Catering, Inc. and Marbro Food Service on November 24, 1967. Prior to these acquisitions, ARA had been present in this market through bids on accounts in competition with Automatic Catering, Inc. Through these acquisitions, ARA attained a 1969 share of full-line vending sales of approximately 20.3 percent, second only to Canteen Corp., and a 1969 share of the manual food service sales of approximately 27.0 percent, second only to Saga Administrative Corp.;

c. The Houston, Texas area, in which prior to November 30, 1967, ARA had less than 1 percent of the total vending and manual food service sales. On November 30, 1967, ARA acquired Tex-O-Matic Vending, Inc., and on December 12, 1967, ARA acquired Nasa Vending, a horizontal competitor of Tex-O-Matic. Through these acquisitions, ARA became the largest vending firm in the market, with approximately 20.1 percent of full-line vending sales, and the largest manual food service firm in the market, with approximately 39.3 percent of the sales;

d. The Duluth, Minnesota area, in which, on September 27, 1967, ARA entered the market through the acquisition of Automatic Vending Service of Duluth. The acquired firm at the time of the acquisition had approximately 53 percent of full-line vending sales in Duluth. On April 18, 1969, ARA acquired Automatic Beverage Co., a horizontal competitor of Automatic Vending Service;

e. Other areas in which acquisitions by ARA have lessened or may tend to lessen competition substantially, include, among others, Omaha, Nebraska; Lincoln, Nebraska; St. Clair County, Michigan; Nashville, Tennessee; Knoxville, Tennessee; Warren, Van Buren, White, Putnam, and DeKalb Counties, Tennessee; Las Vegas, Nevada; Corpus Christi, Texas; and Allentown-Easton-Bethlehem, Pennsylvania.

V

VIOLATIONS

18. The effect of ARA's acquisitions, both individually and collectively, of the corporations and noncorporate entities designated in Paragraph 14, may be substantially to lessen competition or to tend to create a monopoly in the vending industry, in full-line vending, in street vending and in the

choice-account vending business in the United States and in various sections thereof including, but not limited to, those areas identified in Paragraph 17, in violation of Section 7 of the Clayton Act (15 U.S.C. 18) and/or Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), in the following ways, among others:

a. Actual competition between ARA and each of the acquired firms has been eliminated, in each instance in which both ARA and the acquired firm operated vending machines in the same counties prior to the acquisition; and in each other instance ARA has been eliminated as a potential entrant in those sections of the country in which the challenged acquisitions occurred;

b. Actual and potential competition between and among many of the acquired firms has been eliminated, and actual and potential competition generally has been eliminated or impaired;

c. Each of the acquired firms has been eliminated as an independent competitive factor and as a viable business entity;

d. Concentration has been and will be increased substantially;

e. ARA has obtained or may obtain a decisive competitive advantage over smaller firms, to the detriment of actual and potential competition;

f. Said acquisitions may precipitate numerous other acquisitions in the vending industry, with a resultant lessening of competition;

g. ARA has induced its accounts to enter into long-term contracts which have foreclosed other vendors from effectively competing;

h. ARA has achieved a dominant position in financial resources which has enabled it to obtain a decisive advantage over smaller firms by offering large advance commissions, bonuses, loans and other inducements to actual or prospective accounts;

i. Opportunities for entry into the vending industry, particularly into full-line vending, by small entrepreneurs have been substantially lessened;

j. Said acquisitions have contributed and may contribute to the development of an industry structure conducive to non-price competition and other oligopolistic market behavior; and

k. The consuming public has been denied the full fruits of the additional competition which would have existed absent the acquisitions.

19. Respondent's acquisitions, both individually and collectively, of the corporate and non-corporate firms described in Paragraph 14 constitute an attempt to monopolize or substantially lessen competition in vending, full-line vending, street vending and choice-account vending in the various sections of the United States in which such acquisitions have occurred, including, but not limited to, those areas identified in Paragraph 17, and are unfair methods of competition and unfair acts and practices in commerce, and are in violation of Section 5 of the Federal Trade Commission Act (18 U.S.C. 45).

TABLE I
Vending machine locations (including locations of subsidiaries)

Date of acquisition	Name of acquired firm City and state	Full-line vending	Generally	By standard metropolitan statistical area (SMSA)	At the time of acquisition, did ARA have vending machines in any counties in which the acquired firm had vending machines?	Complaint
Sept. 1, 1967	Brown Thomas Vending Co. Easton, Pa.	yes	Northampton, Co., Pa.	Allentown-Bethlehem-Easton, Pa. SMSA	yes	
Sept. 12, 1967	Giant Vending Co. Long Beach, Cal.		Los Angeles, Cal.	Los Angeles, Cal. SMSA	yes	
Sept. 15, 1967	The Charles Corp. Youngstown, Ohio	yes	Mahoning and Trumbull, Co., Ohio	Youngstown-Warren, Ohio SMSA	yes	
Sept. 29, 1967	Automatic Vending Service of Duluth, Minn. Duluth, Minn.	yes	St. Louis Co., Minn. and Douglas Co., Wisc.	Duluth-Superior, Minn.-Wisc. SMSA	no	
Oct. 27, 1967	Montgomery Chuckwagon, Inc. Brentwood, Md. Winnie's Corporation & Affiliates	yes	Washington, D.C. and Baltimore, Md.	Washington, D.C. and Baltimore, Md. SMSA	yes	
Nov. 11, 1967	Del Bern, doing business as Best Cigarette Service Fresno, Cal.		Fresno Co., Cal.	Fresno, Cal. SMSA	yes	

Complaint

82 F.T.C.

TABLE I (Con't)
Vending machine locations (including locations of subsidiaries)

Date of acquisition	Name of acquired firm City and state	Full-line vending	Generally	By standard metropolitan statistical area (SMSA)	At the time of acquisition, did ARA have vending machines in any countries in which the acquired firm had vending machines?
Nov. 24, 1967	Automatic Catering, Inc. and Marbro Food Service, Inc. Denver, Colo.	yes	Adams, Arapahoe, Boulder, Denver and Jefferson Co., Colo.	Denver, Colo. SMSA	no
Nov. 28, 1967	Coffee Time, Inc. Detroit, Mich.	yes	Detroit, Mich. SMSA	Detroit, Mich. SMSA	yes
Nov. 30, 1967	Tex-O-Matic Vending Co., Inc. Houston, Tex.	yes	Houston, Tex., SMSA Harris Co., Tex.	Houston, Tex. SMSA	yes
Dec. 1, 1967	Middle Tennessee Vending Co., Inc. McMinnville, Tenn.	yes	Warren, Coffee, Bedford, Lincoln, Moore, Rutherford, DeKalb, Jackson, Cumberland, White, Putnam, Van Buren, Smith, Cannon, Crimdy, Franklin, Wilson, Co., Tenn.	Nuocas Co., Tex.	yes
Dec. 1, 1967	Corpus Christi Cigarette Service Inc. Corpus Christi, Tex.			Corpus Christi, Tex. SMSA	yes

Jan. 12, 1968	Kinney-Bennett-Kinsey, Inc. Ft. Wayne, Ind.	yes	Allen, Adams and DeKalb Co., Ind.	Ft. Wayne, Ind. SMSA	yes	1381
Jan. 12, 1968	Select Foods, Inc. Ft. Wayne, Ind.	yes	Allen Co., Ind.			
Jan. 25, 1968	George W. Haynes Amusement Co. Murfreesboro, Tenn.	yes	Murfreesboro, Tenn. (Rutherford County)	Ft. Wayne, Ind. SMSA	yes	
Jan. 30, 1968	20th Century Vending Co. Grand Rapids, Mich.	yes	Grand Rapids, Mich. area (Kent County)		yes	
Apr. 16, 1968	Kwik Kafé of Lansdale, Inc. Lansdale, Pa.	yes	Montgomery and Bucks, Co., Pa.	Grand Rapids, Mich. SMSA	yes	
Apr. 26, 1968	Theatre Drink Corp. Oceanside, N. Y.	yes	Nassau and Suffolk Co. and New York City, N. Y.	Philadelphia, Pa. SMSA	yes	
June 13, 1968	Merchandisers, Inc. and Chuckwagons, Inc. Fairdale, Ky.	yes	Jefferson, Co., Ky.	New York, N. Y. SMSA	yes	
June 13, 1968	Illinois Vending Company Chicago, Ill.	yes	Cook Co., Ill.	Louisville, Ky., Ind. SMSA	yes	
June 26, 1968	Vendors Sales, Inc. and Coffee Break Corp. Baltimore, Md.	yes	Baltimore Co., Md.	Chicago, Ill. SMSA	yes	ARA SERVICES, INC. Complaint
June 26, 1968	Canteen Company of Birmingham, Inc. Birmingham, Ala.	yes	Jefferson Co., Ala.	Baltimore, Md. SMSA	yes	
July 26, 1968	Bruce Vending Co. Detroit, Mich.	yes	Wayne, Oakland & McCowb, Mich.	Birmingham, Ala. SMSA	yes	
Aug. 23, 1968	Beef and Liberty, Inc. Chattanooga, Tenn.	yes	Rhea, Bledsoe, Marion and Hamilton Co., Tenn.	Detroit, Mich. SMSA	yes	
Sept. 27, 1968	Automatic Vending Co. Visalia, Cal.	yes	Tulare Co., Cal.	Chattanooga, Tenn. SMSA	yes	1391
		yes			yes	

Complaint

82 F.T.C.

TABLE I (Con't)
Vending machine locations (including locations of subsidiaries)

Date of acquisition	Name of acquired firm City and state	Full-line vending	Generally	By standard metropolitan statistical area (SMSA)	At the time of acquisition, did ARA have vending machines in any counties in which the acquired firm had vending machines?
Sept. 27, 1968	Colonial Automatic Sales, Inc. Nashville, Tenn.	yes	Davidson Co., Tenn.	Nashville, Tenn. SMSA	yes
Sept. 30, 1968	Mason-Jeffries, Inc. Derby, Conn.	yes	New Haven and Fairfield Co., Conn.	New Haven, Conn. SMSA and Bridgeport, Conn. SMSA	no
Sept. 30, 1968	National Automatic Services, Inc. Stamford, Conn.	yes	Fairfield and New Haven Co., Conn., and Westchester Co. and N.Y.C., N. Y.	New Haven, Conn. SMSA and Bridgeport, Conn. SMSA and New York, N. Y. SMSA	yes
Oct. 7, 1968	Manor Vending Service, Inc., Swifton Manor, Inc. and Manor Catering Inc. of Indiana Cincinnati, Ohio	yes	Hamilton Co., Ohio	Cincinnati, Ohio SMSA	yes
Oct. 16, 1968	Silco Automatic Vending Co. North Bergen, N. J.		Hudson, Bergen, Passaic, Morris, Middlesex, Union and Essex Co., N. J.; Richmond, Erie and Jersey City, N. J. SMSA	Newark, N. J. SMSA Patterson-Clifton-Passaic, N. J. SMSA Jersey City, N. J. SMSA	yes

Complaint

Oct. 18, 1968	Reinhardt Vending Co., Inc. Reinhardt Catering Co., Inc. Medina, Ohio	yes	Niagara Co., N. Y.; Berks and Lehigh Co., Pa.; and San Francisco, Marin, San Bernardino, Orange Riverside and Los Angeles Co., Cal.	Buffalo, N. Y. SMSA Reading, Pa. SMSA Allentown-Bethlehem- Easton, Pa. SMSA San Francisco, Cal. SMSA San Bernardino, Cal. SMSA Anaheim-Santa Ana-Garden Grove, Cal. SMSA Los Angeles, Cal. SMSA Akron, Ohio SMSA Canton, Ohio SMSA Cleveland, Ohio SMSA	no
Oct. 23, 1968	Automatic Retail Vendors of New England, Inc. Canton, Mass.	yes	Norfolk Co., Mass.		no
Nov. 15, 1968	Pacific Vending Service, Inc. Modesto, Cal.				no
Dec. 2, 1968	Blue Water Vending Co. Port Huron, Mich.	yes	Various counties through- out the states of Cal., Ore., Wash., Nev., Ariz., and Ida. Port Huron, Mich., Metropolitan area, St. Clair and Macomb, Samilar, Lapeer Counties Harris Co., Tex.	undisclosed	yes
Dec. 12, 1968	National Vending Service Houston, Tex.				yes
Jan. 27, 1969	Paramount Automatic Industries Corp. Paramount Juke Box Corp. Braddock Automatic Music Corp. Alfred Minaci, Inc.		New York, N. Y.	Houston, Tex. SMSA New York, N. Y. SMSA	yes yes

Complaint

82 F.T.C.

TABLE I (Con't)
Vending machine locations (including locations of subsidiaries)

Date of acquisition	Name of acquired firm City and state	Full-line vending	Generally	By standard metropolitan statistical area (SMSA)	At the time of acquisition, did ARA have vending machines in any counties in which the acquired firm had vending machines?
	Paramount Cigarette Corp. Rada Cigarette Corp. New York Cigarette Corp. Paramount Canteen Corp. 421 Bruckner Realty Corp., and Dormal Factors, Inc. New York, N. Y.				
Jan. 24, 1969	Lunch Time of Saginaw, Inc. Saginaw, Mich.	yes	Saginaw Co., Mich.	Saginaw, Mich. SMSA	no
Mar. 29, 1969	Altavista Vending Service, Inc. Altavista, Va.	yes	Altavista Co., Va.		no
Mar. 31, 1969	Super Sonic Sound Bellflower, Cal.		Los Angeles and Orange Co., Cal.	Los Angeles SMSA and Anaheim-Santa Ana-Garden Grove, Cal. SMSA	yes
Apr. 18, 1969	Automatic Beverage Co., a division of Auto Vend, Inc.	yes	Duluth, Minn. and Superior, Wisc.	Duluth-Superior, Minn.-Wisc. SMSA	yes

Complaint

May 9, 1969	Duluth, Minn. Seaway Sales Co. Kwik Kafeterias, Inc. Broadview, Ill.	yes	Chicago and Northern Ill.; Union and De Kalb Co., Ill. Bergon County, N. J.	Chicago, Ill. SMSA	yes
May 29, 1969	Standard Vending Corp. Teaneck, N.J.			Undisclosed	yes
June 6, 1969	Clark Vending Service (Denny's Restaurants) Las Vegas, Nev.		Clark Co., Nev.	Las Vegas, Nev. SMSA	yes
June 26, 1969	Vending Unlimited, Inc. and Affiliates Miami, Fla.		Dade, Broward and Palm Beach Co., Fla.	Miami, Fla. SMSA Ft. Lauderdale-Hollywood, Fla. SMSA	no
June 26, 1969	Industrial Vending Machine Company East Lansing, Mich.		East Lansing metropolitan area	West Palm Beach, Fla. SMSA Lansing, Mich. SMSA	no
June 27, 1969	Kwik Coffee Break, Inc. Louisville, Ky.	yes	Louisville, Ky. SMSA	Louisville, Ky. SMSA	yes
Aug. 14, 1969	Sale by Michael & Beatrice Turczyn of Assets Allentown, Pa.		Allentown, Pa.	Allentown-Bethlehem- Easton, Pa. SMSA	yes
Oct. 31, 1969	Allegheny Cigarette Service Co. Monroeville, Pa.	yes	Allegheny, Armstrong, Beaver, Fayette, Greene, Washington and West- moreland Co., Pa. Orange, Los Angeles, Co., Cal. State of Oklahoma and Cleveland, Ohio	Pittsburgh, Pa. SMSA	yes
Oct. 31, 1969	Coast Vending Corporation Los Angeles, Calif.			Los Angeles, Cal. SMSA	yes
Nov. 10, 1969	Culp Distributing Co., Inc. and B & M Music and Vending, Inc. Oklahoma City, Okla.			Cleveland, Ohio SMSA	yes

Complaint

82 F.T.C.

TABLE I (Con't)
Vending machine locations (including locations of subsidiaries)

Date of acquisition	Name of acquired firm City and state	Full-line vending	Generally	By standard metropolitan statistical area (SMSA)	At the time of acquisition, did ARA have vending machines in any counties in which the acquired firm had vending machines?
Dec. 5, 1969	Valley Vending, Inc. and Gordon's Automatic Vending, Inc. Maryville, Tenn.	yes	Knox, Blount, McMinn, Meigs, Monroe, Polk and Loudon Co., Tenn.	Knoxville, Tenn. SMSA	yes
Dec. 31, 1969	Hunsicker Co., Inc. Allentown, Pa.			Allentown-Bethlehem-Easton, Pa. SMSA	yes
Jan. 23, 1970	Nelson Vending Sales, Inc. and Nelson Equipment Corp. Menasha, Wisc.	yes	Winnebago and Outagamie Co., Wisc.		no
Jan. 23, 1970	W. W. & G. Vending, Inc. Las Vegas, Nev.	yes	Clark Co., Nev.	Las Vegas, Nev. SMSA	yes
June 10, 1970	New York Cigarette Service Bronx, N. Y.		New York, N. Y.	New York, N. Y. SMSA	yes
June 30, 1970	Midwest Vending Co. Columbus, Ohio	yes	Franklin Co., Ohio	Columbus, Ohio SMSA	yes
July 7, 1970	County Enterprises, Inc. Bayside, Long Island, N. Y.		Metropolitan, New York	New York, N. Y. SMSA	

1381

Complaint

July 30, 1970	W. J. Smith Co., Inc. Catasauqua, Pa.	Lehigh, Bucks, Northampton, Monroe, Berks, Carbon, Schuylkill, Pa.	Allentown-Bethlehem-Reading SMSA	yes
Aug. 6, 1970	Joseph F. Lewis Distributing Co., Inc. Tonawanda, N. Y.	Niagara, Erie, Counties, N. Y.	Buffalo, N. Y. SMSA	yes
Oct. 2, 1970	Coastal Vendors, Inc. Corpus Christi, Tex.	Corpus Christi and Beeville, Tex. and Nueces and San Patricio Co., Tex.	Corpus Christi, Tex. SMSA	yes
Oct. 30, 1970	Clark Vending Company Las Vegas, Nev.	Clark Co., Nev. (Balance of business. One route acquired Dec. 23, 1969.)	Las Vegas, Nev. SMSA	yes
Dec. 15, 1970	Charm Tobacco Co., Inc. Howard Beach, N. Y.	New York City, N. Y.	New York, N. Y. SMSA	yes
Dec. 16, 1970	Automatic Merchandising Co. Lincoln, Nebr.	Lancaster Co., Nebr.	Lincoln, Nebr. SMSA	no
Dec. 16, 1970	Coffee Time, Inc. Omaha, Nebr.	Douglas and Lancaster Co., Nebr. and Pottawattamie Co., La.	Lincoln, Nebr. SMSA and Omaha, Nebr. SMSA	yes
Dec. 30, 1970	A. V. Vending Co. San Francisco, Calif.	San Francisco, Calif.	Undisclosed	yes
Jan. 19, 1971	C. E. Peterson, Municipal Airport Waterloo, Iowa	N.A.*	N.A.	N.A.
Feb. 19, 1971	Airport Services, Inc. Green Bay, Wisconsin	N.A.*	N.A.	N.A.
March 8, 1971	Servomation Mathias Vending, Inc. Baltimore, Md.	N.A.*	N.A.	N.A.

* Not yet available.

Complaint

82 F.T.C.

April 2, 1971	Florida Music Company West Palm Beach, Fla.	N.A.*	N.A.	N.A.	N.A.
April 29, 1971	Vernon Lignon	N.A.*	N.A.	N.A.	N.A.
May 5, 1971	D & B Sales, Inc. Tustin, Calif.	N.A.*	N.A.	N.A.	N.A.
August 2, 1971	Kay's Music Service Co., Inc. Vandergrift, Pa.	N.A.*	N.A.	N.A.	N.A.
August 30, 1971	AGE Food Services, Inc. Detroit, Mich.	N.A.*	N.A.	N.A.	N.A.
Sept. 3, 1971	Wilson Vend-All Company Elyria, Ohio	N.A.*	N.A.	N.A.	N.A.
Sept. 22, 1971	Virginia Sky-Line Company, Inc. Richmond, Va.	N.A.*	N.A.	N.A.	N.A.
Oct. 8, 1971	American Music, Inc. West Palm Beach, Fla.	N.A.*	N.A.	N.A.	N.A.
Oct. 9, 1971	C & M Catering, Inc. Wickliffe, Ohio	N.A.*	N.A.	N.A.	N.A.
Jan. 7, 1972	Berlo Vending Company Philadelphia, Pa.	N.A.*	N.A.	N.A.	N.A.
Jan. 6, 1972	Old Mill Coffee of California, Inc. San Leandro, Calif.	N.A.*	N.A.	N.A.	N.A.

DECISION AND ORDER

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

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

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

1. Respondent ARA Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its principal office is located at Lombard at 25th Street, Philadelphia, Pennsylvania. The executive offices are located at 10889 Wilshire Boulevard, Los Angeles, California.

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

ORDER

I

(a) *It is ordered*, That respondent, ARA Services, Inc., (hereinafter "ARA" or respondent), a corporation, and its successors and assigns, shall divest the stocks, assets, properties, rights, privileges and interests of whatever nature, tangible or intangible, necessary to support divestitures of the following vending sales volume in the market areas specified below:

Allentown, Pennsylvania	\$1,990,000
Knoxville, Tennessee	590,000
Fort Wayne, Indiana	2,000,000
Omaha/Lincoln, Nebraska	1,500,000
Houston, Texas	750,000
Hudson, Bergen, Passaic, Morris, Monmouth, Middlesex, Somerset, Union, Essex Counties, New Jersey/Richmond County, New York	2,000,000
Indianapolis, Indiana	481,000
Pittsburgh, Pennsylvania	964,000

(b) ARA shall further divest all stocks, assets, properties, rights, privileges and interests of whatever nature, tangible and intangible, necessary to support divestitures of all of its vending sales volume in the following market areas:

Corpus Christi, Texas
Duluth, Minnesota
St. Clair County, Michigan
Las Vegas, Nevada
Louisville, Kentucky

(c) ARA shall further divest all stocks, assets, properties, rights, privileges and interests of whatever nature, tangible and intangible, necessary to support divestiture of all of its route vending sales volume in the following market area:

Lorain/Elyria, Ohio

Each divestiture shall be made up of a viable vending business. Each divestiture shall be absolute but, if the acquirer requests, ARA may, subject to the approval of The Federal Trade Commission as provided in the next paragraph, finance the purchase, or lease rather than sell equipment to the acquirer. In

the event of a foreclosure or repossession pursuant to any leasing or financing agreement, ARA shall redinvest the repossessed vending business and equipment within twelve (12) months of the repossession. With respect to Las Vegas, Nevada, divestitures shall be made to a minimum of two separate acquirers.

With respect to the divestitures specified in part (a) of this paragraph, respondent shall, within sixty (60) days of the service of this order, submit to the Commission a list of the vending operations to be divested in compliance with part (a), including a list of customer locations and vending sales volume. Losses thereafter of vending sales volume in such accounts shall be deemed to constitute divestiture, provided that respondent has exercised customary due care in servicing such locations, has refrained from doing any act which caused such loss, and, has at the time of submission, no knowledge that loss of the accounts to be divested is imminent or probable in the near future. Divestiture shall be made of any gains of vending sales volume in said accounts. Any claim of loss shall be supported by a verified statement of a certified public accountant following audit.

All divestitures specified in part (a) of this paragraph shall be submitted for approval to the Commission by June 30, 1974; all divestitures shall be submitted to the Commission for approval on or before June 30, 1975; and each divestiture shall be consummated within sixty (60) days after final Commission approval of divestiture. After each divestiture, respondent shall forthwith report to the Commission the vending sales volume and customer locations divested.

II

It is further ordered, That no divestiture required by Paragraph I of this order shall be effected directly or indirectly to any person who is at the time of divestiture an officer, director, employee or agent of or otherwise under the control or influence of respondent, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding capital stock of respondent.

III

It is further ordered, That for a period of three (3) years from the date of each divestiture respondent shall not solicit or acquire, directly or indirectly, any of the accounts divested pursuant to this order.

IV

It is further ordered, That respondent shall not repurchase any vending operation divested by it pursuant to this order for a period of ten (10) years after the date of approval of the last divestiture required by this order.

V

It is further ordered, That for a period of ten (10) years from the date of service of this order, respondent shall, except as provided in Paragraph VIII or unless it has received prior Commission approval, cease and desist from acquiring, directly or indirectly, the assets, stock, share capital or any other interest in or of any firm or person engaged in full-line vending as defined in the accompanying complaint in any Standard Metropolitan Statistical Area (SMSA), or county not within an SMSA, in which respondent is engaged in full-line vending operations.

VI

It is further ordered, That for a period of ten (10) years from the date of service of this order, respondent shall, except as provided in Paragraph VIII or unless it has received prior Commission approval, cease and desist from acquiring, directly or indirectly, the assets, stocks, share capital or any other interest in or of any firm or person engaged in street vending as defined in the accompanying complaint in any SMSA, or county not within an SMSA, in which respondent is engaged in street vending operations.

VII

Respondent shall for a period of ten (10) years from the date of service of this order report and describe any proposed acquisition which includes vending operations, except those referred to in Paragraph VIII of the order, and give notice to the Federal Trade Commission at least thirty (30) days before consummation of such acquisition with a satisfactory showing that the reported acquisition complies with the requirements of this order. Such report shall describe separately for both respondent and the operation to be acquired the annual sales volume in full-line vending and street vending and the SMSA and counties in which such business is conducted.

VIII

Nothing contained in this order shall be construed to prohibit respondent: (1) from purchasing new or used vending equipment; (2) from purchasing vending machines, fixtures, equipment and other accessories from any vending business which, as a result of bona fide competitive bids or proposals, has been replaced as a vendor by respondent; (3) from purchasing isolated vending routes or parts thereof as follows:

(a) Full-line vending routes or parts thereof with sales volume which individually does not exceed a maximum of \$165,000 and cumulatively does not exceed a maximum of \$330,000 in any SMSA, or county not within an SMSA, in which respondent is engaged in full-line vending during the ten (10) year term of the order. This subparagraph (a) shall be inapplicable, for a period of five (5) years from the date of this order, in the divestiture areas listed in Paragraph I.

(b) Street vending routes or parts thereof in any SMSA, or county not within an SMSA, in which respondent is engaged in street vending not exceeding the following schedule:

Population	Maximum Cumulative Allowable in 10 years	Maximum Sales Volume of Any One Acquisition
0 to 300,000	\$150,000	\$100,000
300,001 to 800,000	300,000	150,000

No more than one such acquisition in excess of \$75,000 sales volume may be made within any SMSA, or county not within an SMSA, in which respondent is engaged in street vending in any twelve (12) month period. The dollar sales volume figures for street acquisitions in this paragraph are exclusive of federal cigarette excise taxes and all state and local cigarette and sales taxes and are adjustable upward or downward according to the Consumer Price Index published by the Bureau of Labor Statistics.

In any SMSA, or county not within an SMSA, in which respondent is engaged in street vending where the population exceeds 800,000 respondent shall be limited to single street route acquisitions, defined for purposes of this order as the amount of business serviced by a single route man, or part time equivalent.

This subparagraph (b) shall be inapplicable, for a period of five (5) years from the date of this order, in the divestiture areas listed in Paragraph I.

Respondent shall submit a written report of acquisitions covered by this paragraph to the Federal Trade Commission annually from the date of service of this order for the ten (10) year period of the order describing each route acquisition consummated during the period and showing that the reported acquisition complies with the requirements of this paragraph. Each such report shall be supported by a verified statement by a certified public accountant following audit.

IX

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

X

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. All reports shall include, among other things that are from time to time required, a detailed description of the steps taken to comply with this order.

IN THE MATTER OF
HOLLOW METAL DOOR AND BUCK ASSOCIATION, INC., ET
AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2401. Complaint, May 15, 1973—Decision, May 15, 1973.

Consent order requiring a New York City based trade association of manufacturers of steel doors and frames, twenty member companies and thirteen individuals holding managerial positions either in the association or member companies, among other things to cease restraining competition in the steel door and construction industries.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (15 U.S.C. Sec. 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 parties captioned above, and hereinafter more particularly named, designated, described and referred to as respondents, have violated the provisions of the 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 Hollow Metal Door and Buck Association, Inc., hereinafter referred to as H.M.D.B.A., is a non-profit trade association organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business at 405 Lexington Avenue, New York, New York.

Among the stated purposes for which respondent H.M.D.B.A. was organized are those dealing with common management problems and common business interests of the steel door industry including economy and efficiency; employment relations policies; trade practices, customs and usages; study of credits, insurance, obsolescence and depreciation; relations with other industries and organizations and industry progress and public information.

Respondent H.M.D.B.A. is under the general control and management of an executive board, composed of officers of H.M.D.B.A. elected at its annual meetings. Said executive board during much of the time period relevant herein included:

Alfred Finkel, president, and also secretary and director of respondent Williamsburg Fireproof Products Corporation;

Bertram Teich, vice president, and also president and director of respondent Acme Steel Door Corporation;

Samuel Sklar, treasurer and also president and director of respondent F.H.A. Steel Products Corp.; and

Eliot Kalan, secretary and also officer of respondent, County Firedoor Corporation.

Respondent H.M.D.B.A. retains a general counsel and executive secretary, subject to approval of its members. Such position is held by Algernon Miller. The duties of such position involve labor relations matters, governmental agency matters,

collection of money owed to H.M.D.B.A. or any of its members and assistance to the secretary of H.M.D.B.A.

All of the foregoing, having participated in the various acts and practices alleged to be unlawful in this complaint, are named as respondents herein, individually, as officers of H.M.D.B.A., and as officers of the various respondent corporations with which each is affiliated.

PAR. 2. Respondent H.M.D.B.A. has twenty-two members, among which the following members are named hereinafter as corporate respondents.

Respondent Acme & Dorf Metal Door Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1135 Bronx River Avenue, Bronx, New York.

Respondent Acme Steel Door Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 513 Porter Avenue, Brooklyn, New York.

Respondent American Steel Products Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 2110 Broad Hollow Road, Farmingdale, New York.

Respondent Aram Metal Products, Ltd. is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business at 3 West 18th Street, Weehawken, New Jersey.

Respondent Arch Opening Steel Buck Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 68 Lombardy Street, Brooklyn, New York.

Respondent Atlantic Metal Products, Inc. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 200 Ludlow Street, Yonkers, New York.

Respondent Bilt-Rite Steel Buck Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 95 Hopper Street, Westbury, New York.

Respondent City Steel Door Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 820 Whittier Street, Bronx, New York.

Respondent County Firedoor Corporation is a corporation

organized and existing under the laws of the State of New York, with its principal office and place of business at 1190 Longwood Avenue, Bronx, New York.

Respondent Elevator Doors, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business at 59 Warren Street, Paterson, New Jersey.

Respondent F.H.A. Steel Products Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 116 Troutman Street, Brooklyn, New York.

Respondent Firedoor Corporation of America is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 444 Tiffany Street, Bronx, New York.

Respondent General Fire-Proof Door Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 900 Whittier Street, Bronx, New York.

Respondent J.G.L. Custom Metal Doors Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 95 Hopper Street, Westbury, New York.

Respondent SOS Consolidated, Inc., is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business at 1141 North Woodward Avenue, Birmingham, Michigan and a division engaged in the steel door industry, such division having the name of Pioneer Industries and having a place of business at Carlstadt, New Jersey.

Respondent Reliable Fireproof Products Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 65 Mall Drive, Commack, New York.

Respondent Superior Fireproof Door and Sash Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1075 Central Park, Scarsdale, New York.

Respondent Superior Steel Door and Trim Co. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 15-03 126th Street, College Point, New York.

Respondent Triumph Metal Products, Inc., is a corporation organized and existing under the laws of the State of New York,

with its principal office and place of business at 1144 Park Avenue, Bronx, New York.

Respondent Williamsburg Fireproof Products Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 73 Paidge Avenue, Brooklyn, New York.

PAR. 3. The individual parties respondent, named hereinafter, personally participated in meetings of H.M.D.B.A. during which plans to carry out the acts and practices hereinafter described were formulated. They are:

Respondent Moe Brookmeyer, an individual, president and director of respondent Reliable Fireproof Products Corp.;

Respondent Arthur Graine, an individual, president of Pioneer Industries division of respondent SOS Consolidated, Inc.;

Respondent A. David Ross, an individual, vice president and secretary of respondent American Steel Products Corporation;

Respondent Sal Scuderi, an individual, president of respondent Triumph Metal Products Inc.;

Respondent Bernard Schechter, an individual, president of respondent Firedoor Corporation of America;

Respondent Seymour Schnittman, an individual, president of respondent Arch Opening Steel Buck Corp.;

Respondent Sam Shear, an individual, president of respondent City Steel Door Corp.; and

Respondent Aaron Szabo, an individual, secretary, treasurer and director of respondent General Fire-Proof Door Corporation.

PAR. 4. Respondent firms are engaged in the manufacture and sale of products in the steel door industry, including metal doors and frames, metal partitions, elevator doors and frames, elevator cabs and related products, hereinafter collectively referred to in this complaint as metal doors and frames. A major part of respondents' products are sold by means of a bidding process to various building contractors, for installation in public or commercial buildings under construction.

PAR. 5. Although several of respondent firms distribute on a national or regional basis, all of such firms make a significant, if not major, portion of their sales within metropolitan New York,

consisting of, when hereinafter referred to in this complaint, approximately, the area enclosed by a radius of 75 miles from the center of New York City. Within this market respondent firms account for substantially all of the sales of metal doors and frames made to building contractors.

PAR. 6. Each of respondent firms manufactures metal doors and frames at its own plant, located either in the State of New York or New Jersey, and each causes said products to be shipped to customers at various locations outside of the state wherein its plant is located. By virtue of the individual activities of each respondent firm and by virtue of its membership in H.M.D.B.A. and participation in the acts and practices alleged in this complaint, there has been, and is now, a pattern and course of interstate commerce in metal doors and frames by each of the respondents within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by acts and practices alleged in this complaint, respondents have been and continue to be in substantial competition with each other and with other firms in the manufacture and sale of metal doors and frames.

PAR. 8. In the course and conduct of their business in the manufacture and sale of metal doors and frames as above described, and beginning at least as early as May 1968, and continuing to the present, the respondents named in Paragraphs One through Three herein, acting collectively between and among themselves and/or through or by means of respondent H.M.D.B.A., have agreed, conspired or reached a common understanding to adopt and charge uniform terms and conditions of sale to customers in connection with sale of metal doors and frames.

Pursuant to said conspiracy, agreement or common understanding to adopt and utilize uniform terms and conditions of sale respondents engaged in, among other things, the following acts or practices:

a. Adopted resolutions requiring members of respondent H.M.D.B.A. to adhere to specified terms of sale concerning availability of credit, time of payment, disallowance of a retainer, applicability of prime contract conditions, insurance provisions and, after adoption of such resolutions, regularly urged adherence, and surveyed adherence thereto by members of H.M.D.B.A.;

b. Discussed, evolved and adopted a standard bid proposal

form, containing a large number of standard selling terms and, after adoption, regularly urged members of H.M.D.B.A. to use said standard bid proposal form and to reject alternative terms proposed by customers; and

c. Adopted and agreed to employ various other terms or conditions of sale and after adoption, regularly urged members of H.M.D.B.A. to observe such other terms and conditions of sale and to reject differing terms of sale offered by customers.

PAR. 9. In the course and conduct of their business in the manufacture and sale of metal doors and frames and beginning at least as early as April 1969, and continuing to the present, the respondents named in Paragraphs One through Three herein, acting collectively between and among themselves and/or through or by means of respondent H.M.D.B.A., have agreed, conspired or reached a common understanding to formulate, adopt, place into effect and utilize unfair credit reporting methods and uniform terms and conditions of credit in connection with sale of metal doors and frames.

Pursuant to said conspiracy, agreement or common understanding to adopt and utilize unfair credit reporting and uniform terms and conditions of credit, respondents engaged in, among other things, the following acts or practices:

a. Instituted a credit information exchange and collection agency program through respondent H.M.D.B.A. for its members;

b. Established uniform terms and conditions in connection with the extension of credit to customers of members of H.M.D.B.A. and urged uniform treatment of the credit status of such customers by its members;

c. Required members of H.M.D.B.A. to submit information on the credit worthiness of their customers and to notify H.M.D.B.A. periodically of any customer who was delinquent or giving trouble in the payments of its debts;

d. Arbitrarily exchanged inaccurate information between and among themselves concerning the credit status of customers of H.M.D.B.A. members; and

e. Reached a common understanding to refuse to deal with or withhold shipments from, customers who were considered by any member of H.M.D.B.A. to be delinquent or in arrears in payments or considered by any such member to be a problem in connection with payment of accounts.

PAR. 10. In the course and conduct of their business in the manufacture and sale of metal doors and frames and beginning at least as early as May 1968, and continuing to the present, the

respondents named in Paragraphs One through Three herein, acting collectively between and among themselves and/or through or by means of respondent H.M.D.B.A., have agreed, conspired or reached a common understanding to adopt and utilize methods or devices to reserve or allocate specific potential customers for metal doors and frames amongst themselves.

Pursuant to said conspiracy, agreement or common understanding to reserve or allocate potential customers respondents, among other things, from time to time notified respondent H.M.D.B.A. that they were strongly interested in consummating a sale of metal doors and frames to a designated customer and requested respondent H.M.D.B.A. to notify all other members of respondent H.M.D.B.A. to abstain from making competing offers to sell to such customer. Respondent H.M.D.B.A. thereupon directed such request to all members.

PAR. 11. In the course and conduct of their business in the manufacture and sale of metal doors and frames and beginning at least as early as February 1969, and continuing to the present, the respondents named in Paragraphs One through Three herein, acting collectively between and among themselves and/or through or by means of respondent H.M.D.B.A., have agreed, conspired or reached a common understanding to employ harassment, intimidation and coercion, directed at certain members of H.M.D.B.A. and customers and suppliers of members, to effectuate association policies in connection with the sale by respondents of metal doors and frames.

Pursuant to said conspiracy, agreement or common understanding to harass, intimidate and coerce, respondents engaged in, among other things, the following acts or practices:

a. Harassed, intimidated or coerced certain members of H.M.D.B.A. not conforming to association policies through threat of use of H.M.D.B.A.'s power over membership, including the power to expel members or reject resignations, or fine members and through its power to deprive members of union contract coverage; and

b. Harassed, intimidated or coerced customers, including credit delinquents, proponents of alternative terms and conditions of sale and those engaged in a dispute with a member, by bringing collection claims against them on behalf of individual members while at the same time purporting to act as industry spokesman and by indicating to customers that future availability of industry products would depend upon favorable settlement of individual collection claims or disagreements with H.M.D.B.A. members.

PAR. 12. In the course and conduct of their business in the manufacture and sale of metal doors and frames and beginning at least as early as May 1969, and continuing to the present, the respondents named in Paragraphs One through Three herein, acting collectively between and among themselves and/or through or by means of respondent H.M.D.B.A., have agreed, conspired or reached a common understanding to formulate, adopt, place into effect and utilize a plan to fix or stabilize maximum wages or terms of employment by foreclosing to employees of members the opportunity to seek a change of employment.

Pursuant to said conspiracy, agreement or common understanding to fix or stabilize maximum wages or terms of employment, respondents engaged in, among other things, the following acts or practices:

a. Instituted an employee information exchange through respondent H.M.D.B.A. for members, under which members notified H.M.D.B.A. of any employee who failed to report to work at the members' place of business, whereupon respondent H.M.D.B.A. circularized all other members to be on the lookout for the named employee and not to hire him without permission of his former employer; and

b. Regularly urged members not to hire, without such permission, any employee whose name appeared on such circulars, and adopted a resolution providing for expulsion from H.M.D.B.A. of any member who did so.

PAR. 13. In the course and conduct of their business in the manufacture and sale of metal doors and frames as above described, and beginning at least as early as June 1968, and continuing to the present, the respondents named in Paragraphs One through Three herein, acting collectively between and among themselves and/or through or by means of respondent H.M.D.B.A. have agreed, conspired or reached a common understanding to utilize labor union dealings to control or hinder competitive opportunity for the purpose of advancing commercial objectives of respondents.

Pursuant to said conspiracy, agreement or common understanding, respondents engaged in, among other things, the following acts or practices:

a. Asserted, in conjunction with a labor organization, control over the ability of firms to remain in the business of selling metal doors and frames in metropolitan New York, by tying up exclusively for the benefit of members of H.M.D.B.A., access to union workers and union labels required in the business; and

b. Hindered the ability of non-members of H.M.D.B.A. to enter the business of selling metal doors and frames in metropolitan New York, by requesting or demanding that a labor organization organize the workers of such potential entrants or initial entrants.

PAR. 14. The effect of respondents' acts, practices, methods of competition and course of conduct hereinabove alleged in Paragraphs Eight through Thirteen has been and may be substantially to restrain, lessen, injure, destroy and prevent competition in the sale of metal doors and frames and in the construction industry wherein such products are utilized. Said acts, practices, methods of competition and course of conduct engaged in by respondents have been and are to the prejudice of the public, and constitute unfair methods of competition and unfair acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Hollow Metal Door and Buck Corporation, Inc., hereinafter referred to as H.M.D.B.A., is a non-profit trade association organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business at 405 Lexington Avenue, New York, New York;

Respondent Acme & Dorf Metal Door Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1135 Bronx River Avenue, Bronx, New York and is a member of respondent H.M.D.B.A.;

Respondent Acme Steel Door Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 513 Porter Avenue, Brooklyn, New York and is a member of respondent H.M.D.B.A.;

Respondent American Steel Products Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 2110 Broad Hollow Road, Farmingdale, New York and is a member of respondent H.M.D.B.A.;

Respondent Aram Metal Products, Ltd. is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business at 3 West 18th Street, Weehawken, New Jersey and is a member of respondent H.M.D.B.A.;

Respondent Arch Opening Steel Buck Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 68 Lombardy Street, Brooklyn, New York and is a member of respondent H.M.D.B.A.;

Respondent Atlantic Metal Products, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 200 Ludlow Street, Yonkers, New York and is a member of respondent H.M.D.B.A.;

Respondent Bilt-Rite Steel Buck Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 95 Hopper Street, Westbury, New York and is a member of respondent H.M.D.B.A.;

Respondent City Steel Door Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 820 Whittier Street, Bronx, New York and is a member of respondent H.M.D.B.A.;

Respondent County Firedoor Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1190 Longwood Avenue, Bronx, New York and is a member of respondent H.M.D.B.A.;

Respondent Elevator Doors, Inc., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business at 59 Warren Street, Paterson, New Jersey and is a member of respondent H.M.D.B.A.;

Respondent F.H.A. Steel Products Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 116 Troutman Street, Brooklyn, New York and is a member of respondent H.M.D.B.A.;

Respondent Firedoor Corporation of America is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 444 Tiffany Street, Bronx, New York and is a member of respondent H.M.D.B.A.;

Respondent General Fire-Proof Door Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 900 Whittier Street, Bronx, New York and is a member of respondent H.M.D.B.A.;

Respondent J.G.L. Custom Metal Doors Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 95 Hopper Street, Westbury, New York and is a member of respondent H.M.D.B.A.;

Respondent SOS Consolidated, Inc., is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business at 1141 North Woodward Avenue, Birmingham, Michigan and a division engaged in the steel door industry, such division having the name of Pioneer Industries and having a place of business at Carlstadt, New Jersey and is a member of respondent H.M.D.B.A.;

Respondent Reliable Fireproof Products Corp. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 65 Mall Drive, Commack, New York and is a member of respondent H.M.D.B.A.;

Respondent Superior Fireproof Door and Sash Company, Inc., is a corporation organized and existing under the laws of the

State of New York, with its principal office and place of business at 1075 Central Park, Scarsdale, New York and is a member of respondent H.M.D.B.A.;

Respondent Superior Steel Door and Trim Co. is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 15-03 126th Street, College Point, New York and is a member of respondent H.M.D.B.A.;

Respondent Triumph Metal Products, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1144 Park Avenue, Bronx, New York and is a member of respondent H.M.D.B.A.;

Respondent Williamsburg Fireproof Products Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 73 Paidge Avenue, Brooklyn, New York and is a member of respondent H.M.D.B.A.;

Respondent H.M.D.B.A. is under the general control and management of an executive board, composed of officers of H.M.D.B.A. elected at its annual meetings. Said executive board during much of the time period relevant herein included:

Alfred Finkel, president, and also secretary and director of respondent Williamsburg Fireproof Products Corporation;

Bertram Teich, vice president, and also president and director of respondent Acme Steel Door Corporation;

Samuel Sklar, treasurer and also president and director of respondent F.H.A. Steel Products Corp.; and

Eliot Kalan, secretary and also officer of respondent, County Firedoor Corporation;

Respondent H.M.D.B.A. retains a general counsel and executive secretary, subject to approval of its members. Such position is held by Algernon Miller;

Respondent Alfred Finkel, an individual, is an officer of corporate respondents H.M.D.B.A. and Williamsburg Fireproof Products Corporation and formulates, directs, and controls the policies, acts and practices of each of such corporate respondents;

Respondent Bertram Teich, an individual, is an officer of corporate respondents H.M.D.B.A. and Acme Steel Door

Corporation and formulates, directs and controls the policies, acts and practices of each of such corporate respondents;

Respondent Samuel Sklar, an individual, is an officer of corporate respondent H.M.D.B.A. and F.H.A. Steel Products Corporation and formulates, directs and controls the policies of each of such corporate respondents;

Respondent Eliot Kalan, an individual, is an officer of respondent H.M.D.B.A. and County Firedoor Corporation and formulates, directs and controls the policies, acts and practices of each of such corporate respondents;

Respondent Algernon Miller, an individual, is an officer of corporate respondent H.M.D.B.A. and formulates, directs and controls the policies, acts and practices of such corporate respondent;

Respondent Moe Brookmeyer, an individual, is an officer of corporate respondent Reliable Fireproof Products, Inc., and formulates, directs and controls the policies, acts and practices of such corporate respondent;

Respondent Arthur Graine, an individual, is an officer of Pioneer Industries division of respondent SOS Consolidated, Inc., and formulates, directs and controls the policies, acts, and practices of such corporate respondent;

Respondent A. David Ross, an individual, is an officer of respondent American Steel Products Corporation and formulates, directs and controls the policies, acts and practices of such corporate respondent;

Respondent Sal Scuderi, an individual, is an officer of respondent Triumph Metal Products Inc. and formulates directs and controls the policies, acts and practices of such corporate respondent;

Respondent Bernard Schechter, an individual, is an officer of respondent Firedoor Corporation of America and formulates, directs, and controls the policies, acts and practices of such corporate respondent;

Respondent Seymour Schnittman, an individual, is an officer of respondent Arch Opening Steel Buck Corp. and formulates, directs and controls the policies, acts and practices of such corporate respondent;

Respondent Sam Shear, an individual, is an officer of respondent City Steel Door Corp.; and formulates, directs and controls the policies, acts and practices of such corporate respondent; and

Respondent Aaron Szabo, an individual, is an officer of

respondent General Fire-Proof Door Corporation and formulates, directs and controls the policies, acts and practices of such 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

Definitions

1. *Metal doors and frames*, as used in this order, include metal doors, frames, partitions, trim, elevator doors, elevator cabs and any other products made in whole or part of fabricated metal, manufactured, sold or distributed now or in the future for installation or use in a construction project or job.

2. *Bid*, as used in this order, refers to any offer, solicitation, invitation, estimate or other communication, made to a buyer or prospective buyer, containing any term of sale or proposed term of sale.

It is ordered, That respondents:

Hollow Metal Door and Buck Association, Inc.,
Acme & Dorf Metal Door Corp.,
Acme Steel Door Corporation,
American Steel Products Corporation,
Aram Metal Products, Ltd.,
Arch Opening Steel Buck Corp.,
Atlantic Metal Products, Inc.,
Bilt-Rite Steel Buck Corporation,
City Steel Door Corp.,
County Firedoor Corporation,
Elevator Doors, Inc.,
F.H.A. Steel Products Corporation,
Firedoor Corporation of America,
General Fire-Proof Door Corporation,
J.G.L. Custom Metal Door Corporation,
SOS Consolidated, Inc.,
Reliable Fireproof Products Corp.,
Superior Fireproof Door and Sash Company, Inc.,
Superior Steel Door and Trim Co.,
Triumph Metal Products, Inc.,
Williamsburg Fireproof Products Corporation, corporations, and
Alfred Finkel, individually and as an officer of Hollow Metal

Door and Buck Association, Inc., and Williamsburg Fireproof Products Corporation,
Bertram Teich, individually and as an officer of Hollow Metal Door, and Buck Association, Inc., and Acme Steel Door, Corporation,
Samuel Sklar, individually and as an officer of Hollow Metal Door, and Buck Association, Inc., and F.H.A. Steel Products Corporation,
Eliot Kalan, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and County Firedoor Corporation,
Algernon Miller, individually and as Executive Secretary and General Counsel of Hollow Metal Door and Buck Association, Inc.,
Moe Brookmeyer, individually and as an officer of Reliable Fireproof Products Corp.,
Arthur Graine, individually and as an officer of Pioneer Industries Division of SOS Consolidated, Inc.,
A. David Ross, individually and as an officer of American Steel Products Corporation,
Sal Scuderi, individually and as an officer of Triumph Metal Products, Inc.,
Bernard Schechter, individually and as an officer of Firedoor Corporation of America,
Seymour Schnittman, individually and as an officer of Arch Opening Steel Buck Corporation,
Sam Shear, individually and as an officer of City Steel Door Corporation,
Aaron Szabo, individually and as an officer of General Fire-Proof Door Corporation,
and respondents' officers, agents, representatives and employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the manufacture, distribution or sale of metal doors and frames in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, individually, jointly or severally from any of the following:

I

1. (A) Submitting any bid to any customer or prospective customer of metal doors and frames when any price, term or condition of sale contained in said bid was discussed with,

disclosed to or received from, directly or indirectly, any competitor, actual or potential.

(B) Using the present bid proposal form previously recommended by the H.M.D.B.A. and, after ceasing and desisting from such use, each respondent member of H.M.D.B.A. shall, in its independent judgment, arrive at a new bid proposal form containing the future terms or conditions of sale of such member, which future terms or conditions of sale shall not be the subject of any recommendation or suggestion of H.M.D.B.A.

(C) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding, or planned common course of action with any person, firm, or organization to establish, fix, control, stabilize or maintain prices, discounts or the terms or conditions of sale of metal doors and frames including, but not limited to, the terms or proposed terms of any bid.

2. (A) Furnishing, exchanging or circulating any credit information or engaging in any credit reporting plan unless:

(1) the information furnished is in response to a specific request for information concerning a named person, business, firm or transaction;

(2) no recommendation is made concerning the use of such information by the recipient;

(3) the subject of the requested credit information report is first provided with a copy of the report and afforded an opportunity to include comments or corrections; and

(4) the comments or corrections made by the subject of the requested credit information are included with or made a part of the report furnished to the requesting party.

(B) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding, or planned common course of action with any person, firm or organization to deny the availability of credit to any other person, firm or organization, or to adversely affect the credit standing of any such person, firm or organization, except as permitted hereinabove in subparagraph A of this paragraph.

3. (A) Publishing or disseminating, directly or indirectly, or causing to be published or disseminated to any competitor, the name of any customer or prospective customer of metal

doors and frames, for the purpose or with the effect of having that customer or potential customer boycotted or subjected to foreclosure or impediment in obtaining metal doors and frames, except as permitted hereinabove in subparagraph 2(A).

(B) Entering into, performing, enforcing, furthering, or adhering to any conspiracy, contract, agreement, understanding, or planned common course of action with any person, firm or organization to boycott or refuse to deal with any customer or potential customer of metal doors and frames, except as permitted hereinabove in subparagraph 2(A).

4. (A) Publishing or disseminating, directly or indirectly, or causing to be published or disseminated, through H.M.D.B.A. or otherwise, to any competitor any information which permits the identification of any present customer of metal doors and frames for the purpose or with the effect of foreclosing competition for the business of such customer or prospective customer, except as permitted hereinabove in subparagraph 2(A).

(B) Entering into, performing, enforcing, furthering, or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to allocate or divide the market among competitors, whether by customer, work site, geographically or otherwise.

5. (A) Harassing, threatening, coercing, or intimidating any member of the H.M.D.B.A., any purchaser of metal doors and frames, or any supplier of metal doors and frames including, but not limited to, making threats of punishment or of imposition of economic burdens on said members, customers or suppliers, or foreclosing or limiting in any way the opportunity of said members, customers or suppliers to engage in the sale or purchase of said products, or to cause them harm, financial, economic or otherwise, or from taking action to carry out such threats; *Provided, however,* The following may be done:

(1) H.M.D.B.A. may collect claims against members for non-payment of periodic dues and may suspend or expel members on account of one year delinquency of such dues; and

(2) members of H.M.D.B.A. may collect claims or may bring suit against customers for lawful debts, if such

action is taken on an independent basis or through a collection agency without participation or involvement of any competitor, or H.M.D.B.A., its officers and employees, or any other trade association.

- (B) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm, or organization to harass, threaten, intimidate or coerce any member of H.M.D.B.A., any purchaser of metal doors and frames, or any supplier of metal doors and frames.
6. (A) Furnishing, exchanging or circulating to any competitor or potential competitor in the manufacture, sale or distribution of metal doors and frames any information concerning any employee's employment record, background, qualifications or availability for employment unless:
- (1) the information furnished is in response to a specific request from a prospective employer to a former employer for information concerning the employment qualifications of a named employee and only the requesting party is furnished such information;
 - (2) no recommendation is made concerning the use of such information by the recipient;
 - (3) the request contains or is accompanied by signed written consent of the employee to furnish such information; and
 - (4) the information furnished is a truthful and objective report on the employee.

(B) Failing to hire any prospective employee solely or primarily because of his employment with any member of H.M.D.B.A.

- (C) Entering into, performing, enforcing, furthering, or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to prevent, restrain, control or limit employees from change of employment, except as permitted hereinabove in subparagraph A of this paragraph.
7. (A) Communicating to any person, firm or organization any information pertaining to the union or non-union status of any person, firm or organization engaged in manufacture, sale or distribution of metal doors and frames, or about the entry or potential entry by any firm into the business of manufacture, sale or distribution of metal doors and frames.
- (B) Entering into, performing, enforcing, furthering or

adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to exclude other firms from entering the business of manufacture, sale or distribution of metal doors and frames, or to deprive or impede any competitor or potential competitor engaged in the manufacture, sale or distribution of such products of access to union labor, or to impose union terms upon any such competitor or potential competitor.

II

It is further ordered, That respondent Hollow Metal Door and Buck Association, Inc.:

1. Hold election for association officers, disqualifying from candidacy for such office any officer or employee of respondents Williamsburg Fireproof Products Corporation, Firedoor Corporation of America, SOS Consolidated Inc. and County Firedoor Corporation, continuing such disqualification in effect for a period of five years from the date of this order.

2. Amend its by-laws to require that members, as a condition of membership, observe the provisions of this order and consent to be bound by the terms thereof.

3. Permit resignation of a member at any time.

4. Maintain minutes containing a complete record of all discussion and actions of the H.M.D.B.A. and all committees thereof.

III

It is further ordered, That the respondent members of H.M.D.B.A. shall not for a period of ten (10) years after the effective date of this order participate in any trade association or similar organization, other than the H.M.D.B.A., having activities in the Metropolitan New York area or whose members manufacture or sell products for the construction industry, *Provided, however*, That nothing herein shall prevent respondent members from joining such association or organization as non-voting members thereof.

IV

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

V

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

IN THE MATTER OF
LITTON INDUSTRIES, INC.

Docket 8778. Order, May 16, 1973.

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

DISSENTING STATEMENT

BY JONES; *Commissioner:*

Today, by its decision to remand the issue of relief to the administrative law judge, the Commission¹ has in effect reversed itself on its decision and order in the above-captioned case which held that Litton's acquisition of Triumph-Adler had violated Section 7 of the Clayton Act and ordered Litton to divest itself of Triumph-Adler. The Commission has taken this action in response to Litton's petition to the Commission for Reconsideration of the Order of Divestiture or Reopening of the Proceedings.

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

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

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