

Dissenting Statement

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket 8860. Interlocutory Order, Feb. 16, 1973.

Order denying the motion of Consumers Federation of America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc., for permission to intervene, but granting the movants permission to file an *amicus* brief not to exceed 90 typewritten pages and to participate in the oral argument before the Commission.

DISSENTING STATEMENT

BY JONES, *Commissioner*:

The Commission's refusal to grant intervention to the three principle consumer organizations in the United States is directly contrary to established case law respecting the right of the public to intervene in administrative proceedings. It is also directly contrary to the Commission's own prior decisions in which it has laid down the standards under which it would, in the exercise of its discretion, permit intervention in its proceedings.

By its refusal to permit this intervention the Commission seems to be taking the position that its orders can have the potential of injuring the respondents affected but that these same orders, or its failure to issue an order, cannot injure or adversely affect those members of the public whose interests they are intended to protect. This I submit is wrong as a matter of law. It most certainly is wrong as a matter of fact. It is unwise and shortsighted as a matter of effective administrative agency policy. It is arbitrary and discriminatory in terms of the Commission's own practice with respect to intervention requests handled in the exercise of its discretion.

It is perhaps significant that the Commission, in denying this petition for intervention, has seen fit to write only a skeletal opinion which fails to come to grips with the legal and policy issues involved in this petition. Perhaps its failure to do so stems from its recognition of the difficulties it would confront in seeking to justify its decision in the instant case given the state of the law and its own prior actions.

In its opinion in *Firestone*, the Commission granted the intervenors SOUP a limited right to intervene directly in the adjudicative proceedings for the purpose of presenting evidence and arguments on the single issue of the adequacy of the relief to be

entered in the case.¹ In granting the intervention, the Commission noted that SOUP had demonstrated "good cause" to justify allowance of the intervention because it had raised the issue of the necessity for affirmative disclosure relief in a case involving a "public safety danger" for which such relief might be considered "especially appropriate." The Commission also noted that "this issue and this type of case" was high on its own list of priorities and that SOUP's intervention might "contribute to a fuller appreciation of the need for stronger remedies generally in Commission cases." Finally, the Commission noted that the requested intervention, besides being sought in a particularly appropriate case, would not in its judgment "unduly lengthen or complicate the case," nor "prejudice the rights of the respondent."

The circumstances surrounding the instant intervention are in all respects identical to the SOUP request and indeed in several respects present an even more compelling "good cause" for granting the intervenor's motion.

In *Firestone*, the intervenors were a private non-profit corporation whose members were composed of George Washington law students whose efforts to fight for the public interests the Commission applauded as serving the identical interests served by the Commission.² The SOUP intervenors noted that its members were all consumers, affected by deceptive advertising and directly affected by the "risks of personal and property damage due to drivers who believe the tires (made by respondents) are safer than they in fact are." One SOUP member was asserted to have seen the particular Firestone ad challenged in the complaint and to have made the purchase because of the safety features advertised. (Motion, p. 9)

In the instant case, the intervenors are three national consumer organizations, the Consumer Federation of America (with 200 consumer organization members representing 30 million consumers), the Consumers Union (with 300,000 members) and the Federation of Homemakers, Inc. (with 6,000 members). Together these intervenors represent more than 30 million people. Indirectly, they represent all members of the public whose interests will be adversely affected if the Commission fails to properly discharge its

¹In the Matter of The Firestone Tire & Rubber Company, Dkt. 8818, Opinion of the Commission, October 23, 1970 [77 F.T.C. 1666, 1667].

²In the Matter of The Firestone Tire & Rubber Company, Dkt. 8818, Amended Motion of SOUP to Intervene and for Other Purposes, September 1, 1970.

statutory responsibilities to eliminate unfair and deceptive acts and practices.

These intervenors have a unique status as the three principal national consumer organizations in the country, with special expertise in all matters affecting consumers and with a unique status to speak for and promote the interests and consumers in this nation. Each has a long history of actions to protect and promote the interests of consumers throughout the country and each of whom has special expertise in the area of food and nutrition and health.

Like the SOUP intervenors, the three intervenors here claim that the individuals whom they represent are exposed to, react to and are motivated by advertising for which respondents are responsible. Their members include both parents who are concerned with physical and mental growth, development and health of their children as well as consumer of respondents' advertised products who like the SOUP intervenors, have a special interest in the truthfulness of respondents' advertisements and who would be aggrieved by a failure to adequately correct the false, misleading and deceptive impressions created by the challenged advertisements. Thus these petitioners contend they represent the very persons who have personally experienced the injury which respondents' challenged advertisements are alleged in this complaint to have visited on members of the consuming public.

In *Firestone*, the issue which intervenors wished to raise before the Commission involved the issue of the necessity for affirmative disclosure relief in a case that involves "a public safety danger," by reason of the fact that the challenged Firestone advertisements related to the safety and stopping characteristics of Firestone tires. The Commission stated that this was a "category of cases in which such relief may be especially appropriate," that this issue and this type of cases was high on its list of priorities and that it believed that "intervention in this case may contribute to a fuller appreciation of the need for stronger remedies generally in Commission cases." The Commission in *Firestone* stated that this issue respecting the adequacy of relief raised in cases involving public safety was of sufficient importance to warrant permitting intervention in order to assure itself of being adequately informed.

In the instant case, the intervenors wish to raise precisely the same issue of effective relief which the SOUP intervenors were permitted to raise in *Firestone* in a case in which the challenged

advertisements relate to the nutritional value and weight reduction properties of respondents' bread. Yet the Commission here would deny these intervenors the right to contribute to its knowledge in the exact area in which just 2 months ago it stated publicly it required more enlightenment.³

In *Firestone*, the Commission concluded that intervention in the adjudicatory proceedings for the limited purposes of offering evidence and arguments on the issue of the adequacy of the cease and desist order, exercising such discovery rights and presenting briefs and arguments as the examiner deemed reasonable and presenting oral argument to the Commission on appeal would "not unduly lengthen or complicate the case" nor prejudice the rights of respondents. In the instant case, the intervenors are simply seeking to be permitted to intervene as a party in the appellate stage of this proceeding to present oral argument and to file a brief. It is impossible to conclude that granting the instant intervention at the appeal stage of this case could in any way lengthen or complicate the case or prejudice the rights of respondents.

While in *Firestone* the Commission granted intervention over the opposition of its Bureau of Consumer Protection and counsel supporting the complaint, the instant intervention petition is urged by counsel supporting the complaint for several reasons. Counsel supporting the complaint point out that granting the instant petition will not cause any delay or interruption in the proceedings and is consistent with prior Commission action. Secondly, complaint counsel state that denial of this intervention would be inconsistent with complaint counsel's position that "the primary purpose of this proceeding was to protect the interests of consumers." Finally, in their view granting this intervention will promote "a thorough discussion of all issues prior to deciding the extremely important question presented by this case."

Nor is it of any significance, legal or policy wise, that the Commission carefully point out in *Firestone* that its decision thus was the beginning of "a delicate experiment" which should not be construed "as a permanent or irreversible policy decision" and that its grant or denial of such intervention motions "will have minimal, if not non-existent, precedential value." Whatever statements an agency makes with respect to the exercise of its discretion, it is clear that discretion must always be exercised fairly and non-dis-

³ A majority of the Commission in *Firestone* refused to include a corrective advertising provision in the order because they did not believe they had enough information to enable them to determine whether it was necessary.

criminatorily. Agencies cannot pick and choose among intervenors which they like or dislike. Moreover, it is even clearer that actions proclaimed to be an exercise of discretion cannot be used to deny persons rights to which they are entitled. *American Communication Ass'n v. United States*, 298 F. 2d 648, 650 (2nd Cir. 1967) (reversal of FCC "discretionary of intervention")

The Commission has on several occasions indicated the importance of it to be informed directly by consumers themselves of their perception of their own interests rather than simply relying on its own expertise.⁴ Indeed the Commission has on numerous occasions been compelled to remand or dismiss cases because its own counsel failed to support his burden of proof either on the threshold issue of liability or on the need for particular relief provisions contended for.⁵ Here members of the consuming public, in whose interest the Commission purports to act, have indicated their desire to participate in proceedings in order to present their arguments to the Commission as to why in their judgment the law judge's dismissal of this complaint is in error. The issues to which the intervenors wish to address themselves are precisely the issues as to which the Commission has stated it desires to be fully informed about and that intervention requests are likely to be of valuable assistance to it. The Commission's refusal here to permit the intervention either casts serious doubt on the sincerity of its earlier pronouncements or is simply an arbitrary ad hominum refusal to hear these particular intervenors for reasons which the Commission refuses to disclose.

But there is an even broader legal and policy issue involved here in the Commission's action in this case. It is clear that any Commission decision finding that a violation of the law has occurred and that the entry of an order is required in the public interest is reviewable. However, this situation for all practical purposes does not occur when the Commission concludes that a violation of law has not occurred or that the entry of an order is not required in the public interest. Nor is there any review of the adequacy of a Commission order except by the respondent against whom it is entered. Yet members of the public adversely affected by

⁴ *In re Firestone Tire & Rubber Co.*, Dkt. 8818, Opinion of the Commission, September 22, 1972 [81 F.T.C. 398, 441]. *In Re D. L. Blair Corporation*, Dkt. 8837, Opinion of the Commission, January 22, 1973 [p. 252 herein].

⁵ E.g. *FTC v. Pfizer, Inc.*, Dkt. 8819, Opinion of the Commission, July 11, 1972 [81 F.T.C. 23, 56] *In re Firestone, supra*; *National Dynamics*, Dkt. 8803, Opinion of the Commission [p. 546 herein].

Commission actions are no less potential victims of erroneous Commission action as respondents.

Clearly the possibility exists equally that the Commission can as easily err in its findings and conclusions that the public interest does not require an order as it can err in its conclusions that an order *is* required. If the Commission should act in a way which is contrary to the public interest there is no recourse available to the public to secure a review or reversal of its actions. Certainly the Commission can not be heard to argue that it has any greater expertise in determining where the public interest *does not* require an order than it has in determining when the public interest *does* require an order. Yet the latter determinations are presently reviewable whereas the former in the absence of intervention are not. Nor can I conceive of any public policy which would dictate that the Commission's expertise is such that its judgment concluding that the public interest requires an order *should* be reviewable but that its contrary judgment is somehow less fallible and should *not* be reviewed.

Indeed petitioners argue that as persons who can be adversely affected by Commission orders they enjoy a right of judicial review of Commission orders irrespective of whether or not they are permitted to intervene. If this is a correct statement of the law, then even more so should this Commission grant them the right to intervene. It is to me intolerable—and could only be productive of unnecessary delay—to refuse to hear the arguments of persons who may be aggrieved by a Commission order and force them instead to present their arguments to a reviewing court which if they prove to be right would be forced to remand the case to the Commission. Certainly the Commission should not deprive itself of the opportunity to consider such views in reaching its initial decision. By the same token a reviewing court would be in a far better position to evaluate such petitioner's arguments if they had been presented first to the Commission and the court had before it the benefit of the Commission's view of them.

Some might argue that indiscriminate permitting intervenors to participate in Commission proceedings or seek judicial review of Commission orders which they felt adversely affected their interests would play havoc with the Commission's priorities or its decision with respect to the best use of its scarce priorities. I do not believe that this is a realistic fear. Presumably intervention petitions will be filed only in those proceedings in which issues of central concern to the public issues are at stake. Even if this is not

the case, the Commission remains at all times intially in control of the grant or denial of these petitions. If it has a valid reason for denying an intervention petition on its merits, presumably such a decision would receive respectful consideration by any reviewing court. But its reasons must be rational and meritorious and in fact grounded on valid consideration of delay or undue burden on its resources or patent invalidity of the basis asserted in support of the intervention request. Certainly the instant request for intervention can in no way impose any burden on the Commission nor affect in any way the Commission's priorities or its decisions. The case has already been adjudicated. Appeal has already been filed with the Commission. Should the intervenors ultimately disagree with the Commission's decision—and determine to appeal—the Commission need take no action at all. It can simply rely on its opinion and leave to the intervenors to attempt to convince the reviewing court of its error.

An *amicus curiae* brief in no way resolves the basic issue presented by this petition for intervention. That issue is a simple one and goes to the single question of whether persons adversely affected by Commission action have a *right* to intervene or whether they must depend on the whim of the Commission as to whether it will or will not hear their argument. I am convinced that both the law and the dictates of sound policy require the Commission to grant petitions to intervene when the intervenors can demonstrate that they have a genuine interest in the action which may be adversely affected by the Commission's action.

SEPARATE STATEMENT

BY DIXON, *Commissioner*:

As noted by the numerous citations in the dissent, the dissenting Commissioner places complete reliance on our decision in *Firestone*. However, throughout nine pages of dissent, our dissenting Commissioner completely ignores the one indispensable distinction between this case and *Firestone*. In the *Firestone* case there was no allegation in the complaint which would support what the dissenting Commissioner refers to as a "corrective advertising" provision in the order, nor was there such a provision in the proposed order, and thus there was no attempt by complaint counsel to support such a provision. This is the only reason that I voted to permit S.O.U.P. its limited intervention. In this matter, the issue was fully

presented by complaint counsel, was fully tried, and was squarely before the administrative law judge.

The Commission is charged by Congress with the duty of protecting the public interest. The Commission is capable of performing this duty on the record before us. I have no objection to permitting the consumer groups to file an *amicus curiae* brief which may assist us in reaching a decision. However, to allow intervention for the only purpose of permitting the consumer groups to appeal from an adverse decision, which is the stated purpose of their petition, is to concede that the Commission is not capable of performing its Congressional mandate. While the dissenting Commissioner seems to have made this concession, I have not.

The dissenting Commissioner states that she cannot "conceive of any public policy which would dictate that the Commission's expertise is such that its judgment concluding that the public interest requires an order *should* be reviewable but that its contrary judgment is somehow less fallible and should not be reviewed." While this statement is obviously intended to be in derogation of the majority decision, it merely reflects a misconception. It is not the Commission which determined that an adverse decision to a respondent should be reviewable. It was the Congress. It was also the Congress which, by not providing for review of an order of dismissal, determined that the Commission was fully capable of making its decisions in the public interest.

In the last sentence on page 8 [p. 705 herein] of the dissent, the dissenting Commissioner seems to be setting forth her standards for a Commission decision for denial of intervention. In particular, she cites the "patent invalidity of the basis asserted in support of the intervention request." If we rely on the dissenting Commissioner's reasons for granting this particular request, *i.e.*, that the individuals represented by movants "are exposed to, react to, and are motivated by advertising for which respondents are responsible," there are very few persons who could be denied intervention. And to argue that it is not a "realistic fear" that such persons would petition for intervention once it is allowed in a case such as this, is only to express one's personal opinion. In my personal opinion, to permit intervention on the basis of the assertions of the movants in this matter is to open the door for intervention in any matter by practically any consumer and thereby "play havoc" with Commission priorities. More importantly, as appears to be urged by the dissenting Commissioner, we would be abdicating our responsibility to act in the public interest.

Finally, the dissent relies on the fact that complaint counsel urged approval of the petition for intervention. Faced with the fact that complaint counsel lost the "corrective advertising" issue before the administrative law judge, this is hardly grounds for permitting intervention in support of his position.

ORDER (1) DENYING MOTION TO INTERVENE, AND (2) GRANTING PERMISSION TO FILE AMICUS BRIEF AND PRESENT ORAL ARGUMENT

This matter is before the Commission upon motion of Consumers Federation of America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc., to intervene as parties supporting the complaint filed January 5, 1973. In an initial decision dated December 18, 1972, the administrative law judge ordered that the complaint herein be dismissed. On January 2, 1973, complaint counsel filed a notice of appeal from the initial decision.

Movants do not seek to reopen the hearing, adduce new evidence or enlarge the record. Their request for intervention is limited to a request for permission to file a brief and present their position in the oral argument before the Commission. It is apparent that their arguments can be presented effectively by way of an *amicus curiae* presentation. See *In the Matter of Kennecott Copper Corporation*, Docket No. 8765 (Orders of June 15, 1970; August 28, 1970; December 18, 1970); and *Firestone*, Docket No. 8818 (Opinion and Order of October 23, 1970 [77 F.T.C. 1666, 1667]). Consequently, the Commission sees no reason at the present time to grant the motion for intervention.

The Commission notes that the moving parties here have sought intervention for the purpose of preserving their alleged right to appeal as persons who may be "adversely affected" or "aggrieved" by a Commission order under 5 U.S.C. § 702 (1970).¹ If the would-be intervenors can convince a court to assume jurisdiction under this section, then they are entitled to judicial review without having been made a party to the proceeding before the Commission. The question of the reviewability of Commission orders is, however, a matter properly to be determined by the courts; and our designation of movants as *amicus curiae* is not to be interpreted as an indication one way or the other of the Commission's view of the merits of the reviewability question.

The motion to intervene as a party is denied. However, movants are granted permission to file an *amicus* brief not to exceed 90

¹ A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. 5 U.S.C. § 702 (1970).

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typewritten pages and to participate in the oral argument before the Commission.

Commissioner Jones dissenting and Commissioner Dixon filing a separate statement.

IN THE MATTER OF
SUCCESS MOTIVATION INSTITUTE, INC., ET AL.

Docket C-1768. Order, Feb. 16, 1973.

Order denying respondents' petition to reopen the proceeding for the purpose of modifying Paragraph 4 of the order to cease and desist to permit compilation of required information only with respect to "full-time active" franchisees; reopening the proceeding for the purpose of modifying Paragraph 4 of the order to cease and desist; and modifying Paragraph 4 of the order to read as set forth.

ORDER

This matter is before the Commission on a petition to reopen filed on November 24, 1972, by Success Motivation Institute, Inc. and Paul J. Meyer pursuant to Section 3.72 (b) (2) of the Commission's Rules of Practice. Petitioners claim that changed conditions of fact and considerations of the public interest require that the order to cease and desist entered against them on July 14, 1970 [77 F.T.C. 943, 946], be altered and modified. The petition relates to Paragraph 4 of said order which requires disclosure of statistical information to prospective franchisees and distributors of petitioners. Specifically, the petition requests (1) that the requirement that information be compiled on a calendar year basis be modified to permit compilation on a fiscal year basis, and (2) that the requirement that information be compiled with respect to all franchisees and distributors be modified to permit compilation only with respect to "full-time active" franchisees and distributors. The Acting Director of the Bureau of Consumer Protection has filed an answer opposing only the second requested modification.

Upon consideration of the grounds given in support of the first modification sought by petitioners it would appear that the requirement that information be compiled on a calendar year basis would be unduly burdensome and that the modification requested would not effect a significant change in the order.

With respect to the second requested modification, petitioners allege that, unless notified, they have no way of knowing when a

franchisee or distributor may become inactive. They further allege that, as a consequence, the data required to be disclosed by subparagraphs 4(a) and 4(b) of the order is distorted by the inclusion of such inactive distributors.

The Commission finds petitioners' contention to be wholly without merit. The purpose of the order provisions under consideration is to prevent misrepresentations as to the probability of a prospective franchisee achieving success in the distribution of petitioners' product, including representations that petitioners' franchisees are uniformly successful and all enjoy substantial incomes from their distributorship. Elimination of all but full-time active franchisees from a statistical summary showing median and mean gross sales to franchisees and distributors and the turnover in such distributors would defeat this purpose.

For the foregoing reason, the Commission is of the opinion that petitioners have failed to establish that changed conditions of fact or law or public interest considerations warrant reopening of this proceeding for the purpose of altering or modifying the order to cease and desist to allow the data required to be disclosed to prospective franchisees and distributors by subparagraphs 4(a) and 4(b) to be computed on the basis of "full-time active" franchisees and distributors only. The Commission has determined, however, that Paragraph 4 of the order should be modified by changing "calendar year" to "fiscal year" and that it would be in the public interest to reopen the proceeding for that purpose.

Accordingly, it is ordered, That petitioners' request that the proceeding be reopened for the purpose of modifying Paragraph 4 of the order to permit compilation of required information only with respect to "full-time active" franchisees and distributors be, and it hereby is, denied.

It is further ordered, That this proceeding be reopened for the purpose of modifying Paragraph 4 of the order to cease and desist to permit compilation on a fiscal year basis of the information required to be disclosed thereby.

It is further ordered, That Paragraph 4 of the order to cease and desist in this matter be, and hereby is, modified to read as follows:

- (4) Failing to furnish to prospective franchisees or distributors reasonably prior to such persons agreeing to become franchisees or distributors, a written tabulation or statistical summary showing, on an accumulative and com-

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parative basis for each fiscal year, beginning with the fiscal year 1966, for each of the corporate respondents' operating divisions the following information:

- (a) The median and mean gross sales to respondents' franchisees or distributors exclusive of initial inventories sold to new franchisees or distributors during the fiscal year.
- (b) The number of franchisees or distributors at the beginning of the fiscal year, the number appointed during the year, the number terminated during the year, the number retained at the end of the year, and the length of time that those retained at the end of the year have been respondents' franchisees or distributors.
- (c) The foregoing information shall be tabulated as a running 4 years analysis so that prospective franchisees or distributors will be furnished such information for the 4 fiscal years immediately preceding the year in which the information is to be furnished; *Provided, That*, the information for the fiscal year most recently completed prior to the year in which the information is to be furnished will be made available within 45 days of the close of that fiscal year.

IN THE MATTER OF

CONSOLIDATED SYSTEMS, INC., ET AL.

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

Docket 8867. Complaint, Oct. 19, 1971—Decision, Feb. 22, 1973.

Consent order requiring a Wawaka, Indiana, correspondence and in-residence school for truck driver training, among other things to cease misrepresenting the nature of their business; representing offers of employment when the real purpose is to obtain prospective purchasers of their training course; misrepresenting respondents' connections or affiliation with the trucking industry; misrepresenting the quality or nature of equipment available; misrepresenting the content, completeness or effect of any of respondents' courses; misrepresenting the terms and conditions under which payment for courses may be made; and guaranteeing employment to graduates of their courses. Respondents are further re-

quired to provide each prospective purchaser a copy of a letter explaining what chance a graduate has of finding a job. The complaint was withdrawn with respect to two former officers of the corporation due to their entering a consent settlement in a collateral matter.

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 Consolidated Systems, Inc., a corporation, and Allen Driscoll, individually and as an officer of said corporation, and Tom Johnson and J. C. Triplett, individually and as former officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Consolidated Systems, 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 2102 E. 52nd Street, Indianapolis, Indiana.

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

Respondent Tom Johnson is an individual and was formerly an officer of said corporation. He formulated, directed and controlled the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 2024 W. Moray Court, Indianapolis, Indiana.

Respondent J. C. Triplett is an individual and was formerly an officer of said corporation. He formulated, directed and controlled the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 103 Rockshire Road, Indianapolis, Indiana.

The respondents, herein, have in the past, cooperated and acted together in carrying out the acts and practices hereinafter set forth.

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

distribution of courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers. Said courses consist of a series of lessons pursued by correspondence through the United States mails and a period of in-residence training at a place designated by respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the correspondence portion of their courses, when sold, to be sent from respondents' place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Respondents utilize the services of salesmen who induce prospective purchasers of respondents' courses located in states other than the State of Indiana to call on said salesmen at respondents' offices. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of a commercial nature. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of obtaining leads to prospective purchasers of their courses, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspapers advertisements containing statements and representations regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive of such advertisements is the following:

SEMI DRIVERS NEEDED

Over age 21, Married or Single, good physical condition, some experience or willing to learn to earn high wages driving Semi Tractor Trailers, Local or Over the Road. Midwest, Mideast and Southern areas. For application write c/o Trucks, P.O. Box 40456, Indianapolis, Ind., 46205, or call (317) 784-1348.

PAR. 5. By and through the use of the statements and representations contained in the advertisement set forth in Paragraph Four and others of similar import and meanings but not expressly set out herein, respondents represent, directly or by implication, that:

1. Consolidated Systems, Inc., is a trucking company.
2. Respondents are offering employment to qualified applicants who will be trained as truck drivers.

PAR. 6. In truth and in fact:

1. Consolidated Systems, Inc., was not and is not a trucking company.

2. Respondents do not offer employment to persons who will be trained as truck drivers. The real purpose of such advertisement is to obtain leads to prospective purchasers of respondents' courses of study and instruction.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to advertisements seeking leads to prospective purchasers to visit respondents' salesmen at respondents' offices. For the purpose of inducing the sale of respondents' courses, such salesmen make to prospective purchasers many statements and representations, direct and by implication, regarding opportunities for employment as truck drivers available to purchasers of respondents' courses, the assistance furnished to respondents' graduates in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents and other statements and representations are made orally by said salesmen. Among and typical, but not inclusive, of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train drivers, and, therefore, employment as a truck driver is assured to persons completing respondents' course.

2. Respondents are connected or affiliated with the Consolidated Freightways Corporation.

3. Respondents operate and maintain school facilities, and that respondents provide training and instruction for prospective truck drivers at these school facilities.

4. Respondents will train enrollees on the best and most up-to-date trucks and auxiliary equipment available in the trucking industry.

5. Persons completing respondents' course will thereby be qualified for employment as local or over-the-road truck drivers without further training or experience.

6. Persons enrolling in respondents' course are required to post a bond or pay an insurance fee.

7. Payment of the balance of the cost of respondents' course remaining after the initial or registration fee has been paid can be deferred until after the student has completed the course and obtained employment as a truck driver.

8. To other prospective purchasers of respondents' course, representations have been made that respondents will handle or arrange financing of the balance of the cost of respondents' course remaining after the initial or registration fee has been paid.

9. Respondents have a placement service which will secure a job as a local or over-the-road truck driver for graduates of respondents' course and such a job is assured for everyone who wants to work.

10. Graduates who desire employment in a particular geographic area are assured of a job in the area of their choice.

PAR. 8. In truth and in fact:

1. Respondents have not been requested by trucking companies to train drivers and, therefore, employment as a truck driver is not assured to persons completing respondents' course.

2. Consolidated Systems, Inc., has not had nor has it now any connection or affiliation with Consolidated Freightways Corporation.

3. Respondents do not operate and maintain school facilities that provide training and instruction for prospective truck drivers. Respondents have no school or training facilities whatsoever and send all enrollees to an independent truck driver training school.

4. Respondents own no trucks or auxiliary equipment whatsoever. The equipment provided by the independent training school is of poor quality and is often inoperable.

5. Persons completing respondents' course are not thereby qualified for employment as local or over-the-road truck drivers without further training or experience.

6. The sum of money that enrollees in respondents' course are required to pay is not a bond or an insurance fee but is a non-refundable registration fee.

7. Respondents generally require that the balance of the cost of respondents' course remaining after the initial or registration fee has been paid must be paid before the student can attend the resident training portion of the course and do not permit stu-

dents to defer such payments until after employment as a truck driver has been obtained.

8. Respondents seldom if ever handle or arrange financing to enable purchasers of respondents' course to pay the balance of the cost.

9. Respondents do not have a placement service which will secure a job as a local or over-the-road truck driver for graduates of respondents' course and such a job is not assured for everyone who wants to work.

10. Graduates who desire employment in a particular geographic area are not assured of any job much less a job in the area of their choice.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, 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, institutions, and organizations of various kinds, engaged in the sale and distribution of similar courses of study and instruction.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce a substantial number thereof to purchase respondents' said courses of study or instruction 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 Commission having issued its complaint on October 19, 1971, charging respondents named in the caption hereto with

violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

Counsel for the Commission having moved, pursuant to Sec. 2.34(d) of the Commission's Rules of Practice, that the matter be withdrawn from adjudication as to respondents Consolidated Systems, Inc., a corporation, and Allen Driscoll, individually and as an officer of said corporation, and said matter having been withdrawn from adjudication as to said Consolidated Systems, Inc., and said Allen Driscoll by order dated April 5, 1972; and

It further appearing that the said Consolidated Systems, Inc., and the said Allen Driscoll, and counsel for the complaint have executed an agreement (hereinafter sometimes referred to as the Consolidated-Driscoll agreement) containing a consent order, an admission by said respondents of all jurisdictional facts set forth in the complaint, a statement that the signing of the agreement by said respondents is for settlement purposes only and does not constitute an admission by said respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

Counsel for remaining respondents, namely, Tom Johnson and J. C. Triplett, each individually and as a former officer of said Consolidated Systems, Inc., having moved separately for a withdrawal of the matter from adjudication under Sec. 2.34(d) of the Rules of Practice as to said Tom Johnson and said J. C. Triplett, and that motion having been joined in by counsel supporting the complaint, and said matter having been withdrawn from adjudication as to the said Tom Johnson and the said J. C. Triplett by order dated May 18, 1972; and

It further appearing that the said Tom Johnson and the said J. C. Triplett, by their counsel, and counsel for the complaint, have executed a separate agreement (hereinafter sometimes referred to as the Johnson-Triplett agreement) in a collateral matter containing a consent order which would satisfactorily dispose of all the matters raised in the complaint issued heretofore in the above-captioned matter; and

It also appearing that the ends of justice would be served by withdrawing the complaint in the above-captioned matter as to the said Tom Johnson and the said J. C. Triplett because of the agreement containing a consent order in the collateral matter; and

The Commission having considered the aforesaid Consolidated-Driscoll agreement entered into by said Consolidated Systems, Inc., a corporation, and the said Allen Driscoll, individually and as an officer of said corporation, as well as the collateral agreement with respect to said Tom Johnson and the said J. C. Triplett, and having determined that the said agreements provide an adequate basis for appropriate disposition of this proceeding, the said Consolidated-Driscoll agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Consolidated Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business formerly located at 2102 E. 52nd Street, in the city of Indianapolis, State of Indiana and now located at County Road 600 North, in the city of Wawaka, State of Indiana.

Respondent Allen Driscoll is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Consolidated Systems, Inc., a corporation, and its officers and directors, and Allen Driscoll, individually and as an officer of said corporation, and respondents' representatives, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study and instruction in truck driving or any other subject, trade or vocation, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent Consolidated Systems, Inc., is a trucking company; misrepresenting, in any manner, the nature of respondents' business.

2. (a) Failing to disclose, clearly and conspicuously, in advertisements seeking leads to prospective purchasers of respondents' courses, in catalogs, brochures and on letterheads that respondents' business is that of a seller of a course of study and instruction for prospective truck drivers, not affiliated with any trucking company.
- (b) Failing to disclose, clearly and conspicuously, in advertisements seeking leads to prospective purchasers of respondents' courses which are sold through sales representatives, that inquirers will be visited by respondents' sales representatives.
3. Representing, directly or by implication, that employment is being offered when the real purpose of such offer is to obtain leads to prospective purchasers of respondents' courses.
4. Failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.
5. Representing, directly or by implication, that respondents have been requested to train drivers by any trucking company; misrepresenting, in any manner, respondents' connection or affiliation with the trucking industry or any member thereof.
6. Representing, directly or by implication, that respondents are connected or affiliated with Consolidated Freightways, Inc.
7. (a) Representing, directly or by implication, that respondents operate a training school or facility for prospective truck drivers.
- (b) Representing, directly or by implication, that enrollees in respondents' course in truck driver training will be trained on the best and most up-to-date truck driver training equipment available; misrepresenting, in any manner, the quality or nature of truck driver training equipment available for enrollees' training.

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8. (a) Representing, directly or by implication, that persons completing respondents' course in truck driver training will thereby be qualified for employment as local or over-the-road truck drivers without further training or experience; misrepresenting, in any manner, the content, completeness or effect of any of respondents' courses.
 - (b) Failing to provide to each prospective purchaser of respondents' truck driver training program a copy of Letter A, a copy of which is attached hereto and incorporated by reference herein, typed or printed on the same letterhead used by respondents on their promotional material, before any fee whatsoever is collected from such prospective purchaser and before any contract or similar document is signed by such prospective purchaser.
9. Representing, directly or by implication, that enrollees in respondents' course in truck driver training are required to post a bond or pay an insurance fee; misrepresenting, in any manner, the nature or purpose of any fee which must be paid by enrollees in respondents' courses.
10. (a) Representing, directly or by implication, that the balance of the cost of respondents' course remaining after the initial or registration fee has been paid can be deferred until after the student has completed the course and obtained employment as a truck driver;
 - (b) Representing, directly or by implication, that respondents will handle or arrange the financing of any portion of the cost of respondents' course;
 - (c) Misrepresenting, in any manner, the terms or conditions under which payment may be made for respondents' courses.
11. Representing, directly or by implication, that respondents' placement service will guarantee or assure the placement of graduates in jobs for which respondents' courses are represented to train them, or will guarantee or assure the placement of graduates in such jobs, in the geographical area of their choice; misrepresenting, in any manner, re-

spondents' ability or facilities for assisting graduates of their courses in obtaining employment.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in selling respondents' courses of study and instruction and secure from each such salesmen or other person a signed statement acknowledging receipt of said order.

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

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

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

It is further ordered, That the complaint be withdrawn with respect to individual respondents Tom Johnson and J. C. Triplett.

Letter A

Dear Student,

BEFORE YOU SIGN ANY PAPERS—BEFORE YOU PAY ANY MONEY, please read this letter carefully. Feel free to show this letter to your wife, your parents, or anyone else you choose. Before you pay any money for training, we want you to have some important information about the trucking industry and our own truck driver training program.

CHANCES FOR EMPLOYMENT

Do you want to be an over-the-road truck driver? There is almost no chance that you will be hired as an over-the-road driver by a trucking company unless you already have truck driving experience. Additionally, many large companies prefer to hire only men with two-to-five years of over-the-road experience. Therefore, even if you complete our driver training program, it is very unlikely that a trucking company will hire you as an over-the-road driver.

What type of job is open to a graduate of a driver training school? A graduate of a driver training school without prior driving experience may be able to get a job as a loader or freight handler with a large trucking company. He may be able to work up to driving from there. Or

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he may be able to get a job driving small trucks for a local retailer or a cartage company.

If you believe you will be working as a semi-driver immediately after graduation, you will probably be bitterly disappointed.

NO GUARANTEES!

Do you think that you can pay for our course with small monthly payments after you have a driving job? Don't believe that or you may be very disappointed. If you pay us only part of the total fee, you will receive no actual resident training. This is because our registration fee is *non-refundable*. Even if your bank refuses to lend you the balance of the payments, don't ask us for your money back.

WHAT SHOULD YOU DO!

How can you find out if our training will help you? Go see the trucking companies in your area. Ask them if they would hire you if you completed our course. Find out if these trucking companies require you to be 25 years old or require you to meet other company standards. You can get the names of trucking companies from the Yellow Pages or your local Better Business Bureau. If you have any questions about anything relating to our course, write them down. Then ask us for a written answer to those questions.

Finally, if you believe you have been misled in any way about our driver training program, let the Federal Trade Commission know what we said or did to give you that impression. Write the Federal Trade Commission, Washington, D. C. 20580.

We believe we are in compliance with the law, but we want you to know the facts before you enter into any agreement.

IN THE MATTER OF

HENRY FRANCO, TRADING AS CAMEO CARPET MILLS

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

Docket C-2355. Complaint, Feb. 22, 1973—Decision, Feb. 22, 1973.

Consent order requiring a Union City, California, manufacturer and seller of carpets and rugs, 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 provision 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 Henry Franco, an individual, trading as Cameo Carpet Mills, hereinafter referred to as respondent, has violated the provisions of the 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 Henry Franco is an individual, trading as Cameo Carpet Mills.

Respondent is engaged in the manufacture and sale of carpets and rugs. His office and principal place of business is located at 30500 Union City Boulevard, Union City, California.

PAR. 2. Respondent is now and for some time last past has been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products 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 products mentioned hereinabove were carpets and rugs in styles "Mission" and "Ventura," subject to Department of Commerce Standard For the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such 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 respondent named in the caption hereof, and the respondent having been furnished there-

after with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said 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 Henry Franco is an individual trading as Cameo Carpet Mills.

Respondent is engaged in the manufacture and sale of carpets and rugs. His office and principal place of business is located at 30500 Union City Boulevard, Union City, California.

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

ORDER

It is ordered, That respondent Henry Franco, individually and trading as Cameo Carpet Mills, or any other name or names, his successors and assigns, and respondent's agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, 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 continued in effect, issued or amended under the provisions of the aforesaid Act.

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

It is further ordered, That the respondent herein either process the 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 products.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon him of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since January 27, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondent will submit with his report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondent will forward to the Commission for testing a sample of any such carpet or rug.

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 or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Complaint

IN THE MATTER OF
GEORGIA-PACIFIC CORPORATION, ET AL.

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

Docket C-2356. Complaint, March 1, 1973—Decision, March 1, 1973.

Consent order requiring a Portland, Oregon, manufacturer, seller and distributor of a variety of wood and paper products, and its Crossett, Arkansas, wholly-owned subsidiary, a supplier of general industrial equipment, among other things to cease receiving brokerage allowances.

COMPLAINT

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

PARAGRAPH 1. Respondent Georgia-Pacific Corporation hereinafter referred to as "Georgia-Pacific," is, and has been, a corporation organized, existing and doing business under the laws of the State of Georgia with its present office and principal place of business located at 900 S.W. Fifth Avenue, Portland, Oregon.

PAR. 2. Respondent Tri-State Mill Supply Company, Inc., hereinafter referred to as "Tri-State," is, and has been, a corporation organized, existing and doing business under the laws of the State of Delaware with its present office and principal place of business located in Crossett, Arkansas.

PAR. 3. Georgia-Pacific is engaged in the manufacture, sale, and distribution of a wide variety of products including, but not restricted to, soft wood plywood, plywood specialties, lumber, gypsum products, chemicals, wood by-products, and a variety

of paper and paper products including board, newsprint, tissues, toweling, napkins, and paper. Among its other activities, Georgia-Pacific owns and operates respondent Tri-State.

In the course and conduct of its business, Georgia-Pacific is and has been purchasing for use, consumption and for resale, products, materials and supplies in commerce, as "commerce" is defined in the Clayton Act, as amended, which products, materials, and supplies it purchases from sellers located in several States of the United States. The said products, materials, and supplies are then caused by Georgia-Pacific to be transported from the sellers' place of business in the various States of the United States to its warehouses and facilities located in various other States of the United States. Thus, there has been and is now a continuous course of trade in commerce in the purchase of said products, materials, and supplies by Georgia-Pacific.

PAR. 4. Tri-State is engaged in the supply of general industrial equipment and materials to Georgia-Pacific and other users. It operates eleven warehouses and sales outlets in the States of Oregon, Arkansas, California, Louisiana, Texas and Mississippi. Tri-State was acquired by Georgia-Pacific in 1962. Between 1962 and 1968 approximately 89 percent of the capital stock of Tri-State was owned by Georgia-Pacific and another subsidiary controlled by Georgia-Pacific. Since 1968 when Georgia-Pacific purchased the remaining outstanding stock, Georgia-Pacific and the other subsidiary controlled by Georgia-Pacific have owned all of the stock of Tri-State. Tri-State has thusly been directly or indirectly controlled by Georgia-Pacific since 1962 and Georgia-Pacific has since that time dominated and directed the practices and policies of Tri-State.

In the course and conduct of its business, Tri-State is and has been engaged in furnishing products to purchasers located in various States of the United States, which products, when purchased and when sold have been transported from facilities in various States of the United States to Tri-State's own facilities and those of other purchasers located in various other States of the United States. In so doing Tri-State is and has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged for several years last past.

PAR. 5. In connection with such purchases in commerce as have been described hereinabove, respondents Georgia-Pacific and Tri-State have collected and received and are now collecting

and receiving, directly and indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, from firms selling to Georgia-Pacific and there have been and are many different and varied arrangements and agreements among and between Tri-State, Georgia-Pacific and their suppliers for the receipt and collection of same. Such commissions, brokerages, and other compensations, or allowances or discounts in lieu thereof, have been received from their suppliers, among other ways, in the form of discounts, rebates, credits, direct payments, and, on particular transactions, as the difference between the amount that Tri-State has remitted to the seller and the amount that Georgia-Pacific has remitted to Tri-State. Many of the sales by suppliers to Georgia-Pacific wherein said commissions, brokerages, and other compensations, or allowances or discounts in lieu thereof, were paid to Tri-State and Georgia-Pacific, originated in previous arrangements with the suppliers initiated by Georgia-Pacific either solely or in conjunction with Tri-State. In all such cases, shipments were made directly from the supplier to Georgia-Pacific, or to Tri-State as a special Georgia-Pacific order, except in consignment and credit balance arrangements.

Concurrently with the receipt by respondents of such commissions, brokerages, and other compensations, or allowances or discounts in lieu thereof, Tri-State has been rendering to respondent Georgia-Pacific services and other valuable considerations, including, but not limited to, purchasing services, cost savings, and dividend payments.

PAR. 6. Certain of the aforementioned arrangements for the receipt of commissions, brokerages, services, and other compensations, or allowances or discounts in lieu thereof, operated substantially in the following manner and under the following circumstances.

A manufacturer entered into an agreement with Georgia-Pacific and Tri-State whereby it maintained a stock of its products on a credit balance with Tri-State. On purchases by Georgia-Pacific from this stock, and on purchases by Georgia-Pacific from the manufacturer, one percent was allowed to Tri-State as a brokerage, commission, or other compensation, or allowance or discount in lieu thereof. Prices were negotiated directly between the manufacturer and Georgia-Pacific.

For many years last past Tri-State has accepted lamps on a consignment basis from an electrical equipment manufacturer as

that manufacturer's agent. Substantial amounts of these lamps were sold to Georgia-Pacific. The difference between the amount that Tri-State paid the manufacturer and Tri-State's price to Georgia-Pacific constitutes commissions, brokerages, or other compensations.

In late 1970 a contract was negotiated between a chemical supplier and Georgia-Pacific wherein Tri-State was designated a buyer and the chemical supplier was designated a seller of certain chemicals. A two and one half percent brokerage fee based on the volume of Georgia-Pacific purchases was received by Georgia-Pacific, from the chemical supplier, one and one half percent of which was credited to Tri-State and one percent of which was retained by Georgia-Pacific. For the first two quarters of 1971, purchases of a dollar value of \$32,052.79 were made by Georgia-Pacific from this supplier. A total brokerage of \$801.32 was paid to Georgia-Pacific upon the said purchases, which sum was split as above described.

For several years last past, an arrangement has existed between a number of subsidiaries of a major manufacturer and Georgia-Pacific for the supply of refractories, fire brick and related supplies to Georgia-Pacific. Pursuant to such arrangement, Georgia-Pacific placed orders with the manufacturer for shipment directly from it to Georgia-Pacific. Tri-State has received by discount a 5 percent commission, brokerage, or other compensation, or allowance or discount in lieu thereof, on the sale by the manufacturer to Georgia-Pacific.

PAR. 7. The aforesaid acts and practices of respondents, and each of them, in receiving and accepting from suppliers anything of value as a commission, brokerage, or other compensation, or allowances or discounts in lieu thereof, paid or provided to the other party to the transaction, either directly or indirectly, or to an agent, representative, or other intermediary subject to the direct or indirect control of a party to the transaction, are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished

thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Subsection (c) of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 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 Georgia-Pacific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 900 S.W. Fifth Avenue, Portland, Oregon.

Respondent Tri-State Mill Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Crossett, Arkansas.

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

ORDER

It is ordered, That respondent Georgia-Pacific Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the

purchase of industrial supplies, equipment, machinery, or other products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Receiving or accepting services, monies or anything of value from Tri-State Mill Supply Company, Inc., or any intermediary, agent, representative or broker in connection with the purchase by said respondent of industrial supplies, equipment, machinery, or other products when such intermediary, agent, representative or broker is receiving or accepting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, from the seller while acting for, or in behalf of, or subject to the direct or indirect control of said respondent.

2. Receiving or accepting directly or indirectly from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase by said respondent of industrial supplies, equipment, machinery or other products.

It is further ordered, That respondent Tri-State Mill Supply Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchase of industrial supplies, equipment, machinery, or other products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of industrial supplies, equipment, machinery, or other products, for its own account or where said respondent is the agent, representative or intermediary acting for, or in behalf of, or subject to the direct or indirect control of, the buyer.

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

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

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

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

IN THE MATTER OF
BERKSHIRE HANDKERCHIEF CO., INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION AND
THE FLAMMABLE FABRICS ACTS

Docket C-2357. Complaint, March 1, 1973—Decision, March 1, 1973.

Consent order requiring a New York City importer and seller of men's, women's and children's wearing apparel, including, but not limited to, ladies' scarves among other things to cease 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 Berkshire Handkerchief Co., Inc., a corporation, and Ralph I. Dweck, Abraham I. Dweck, also known as Bert Dweck, and David Chabott, individually and as officers 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 Berkshire Handkerchief Co., Inc.,

is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Ralph I. Dweck, Abraham I. Dweck, also known as Bert Dweck, and David Chabott, are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

The respondents are engaged in the importation and sale of men's, women's and children's wearing apparel, including, but not limited to, ladies' scarves, with their office and principal place of business located at 1 West 37th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale or 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, products, as "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products 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 products mentioned hereinabove, but not limited thereto, were sheer nylon ladies' scarves with metallic thread, 100 percent silk ladies' scarves and ladies' scarves designated as Golden Opal.

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 as such 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 Division of Textiles and Furs 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 Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 Berkshire Handkerchief Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Ralph I. Dweck, Abraham I. Dweck, also known as Bert Dweck, and David Chabott are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

Respondents are engaged in the importation and sale of men's, women's and children's wearing apparel, including, but not limited to, ladies' scarves, with their office and principal place of business located at 1 West 37th Street, New York, New York.

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

ORDER

It is ordered, That respondents Berkshire Handkerchief Co., Inc., a corporation, its successors and assigns, and its officers, and Ralph I. Dweck, Abraham I. Dweck, also known as Bert Dweck, and David Chabott, individually and as officers 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 selling or 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 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 continued in effect, issued or amended 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 products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either (1) process the 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 (2) destroy said products, or (3) return said products to the foreign supplier from whom said products were purchased, after receiving written assurance from said foreign supplier that said products will not be re-introduced into the United States or its possessions. If respondents determine to return said products to their foreign supplier, the shipping containers for such products shall be labeled clearly and conspicuously with the legend: "For Export Only to [name of supplier]—Dangerously Flammable Wearing Apparel—Not to be Returned to the United States or its Possessions," and respondents shall further submit a copy of the actual shipping label to the Commission when available.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a 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 products which gave

rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since October 14, 1970, (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action, and (6) any action taken or proposed to be taken to return said products to the foreign supplier from whom said products were purchased, 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, or 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. Upon request, 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 the 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 the order.

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

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

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IN THE MATTER OF
NORCREST CHINA COMPANY, ET AL.

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

Docket C-2358. Complaint, March 1, 1973—Decision, March 1, 1973.

Consent order requiring a Portland, Oregon, importer and wholesaler of scarves, ceramics and accessories, among other things to cease 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 Norcrest China Company, a corporation, and Hide Naito, 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 Norcrest China Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon. Respondent Hide Naito is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are engaged in the importation and wholesaling of scarves, ceramics and accessories, with their office and principal place of business located at 55 West Burnside Street, Portland, Oregon.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and in 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, products as the terms "commerce" and

"product" are defined in the Flammable Fabrics Act, as amended, which products failed 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 products were scarves.

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 Division of Textiles and Furs 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 Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 Norcrest China Company is a corporation or-

ganized, existing and doing business under and by virtue of the laws of the State of Oregon.

Respondent Hide Naito is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are importers and jobbers of various products including scarves. The office and principal place of business is located at 55 West Burnside Street, Portland, Oregon.

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

ORDER

It is ordered, That respondents Norcrest China Company a corporation, its successors and assigns, and its officers, and Hide Naito, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device do forthwith cease and desist from 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 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 continued in effect, issued or amended 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 products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the 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 products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a 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 products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof. (4) any disposition of said products since May 7, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said 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, or 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 the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business 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 the respondents herein shall, within sixty (60) days after service upon them of this order, file with

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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
MASSRY IMPORTING CO., LTD., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE
FLAMMABLE FABRICS ACTS

Docket C-2359. Complaint, March 1, 1973—Decision, March 1, 1973.

Consent order requiring a New York City manufacturer, seller and distributor of merchandise including women's scarves, 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 Massry Importing Co., Ltd., a corporation, and Louis Massry and Isaac Massry, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Massry Importing Co., Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Louis Massry and Isaac Massry are officers of the said corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporation.

Respondents are engaged in the importation, sale and distribution of merchandise, including, but not limited to, women's scarves, with their office and principal place of business located at 1204 Broadway, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, 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, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products 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 products mentions hereinabove were women's scarves.

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 as such 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

ment 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 Massry Importing Co., Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Louis Massry and Isaac Massry are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent.

Respondents are manufacturers and importers of women's apparel, including women's scarves, with their office and principal place of business located at 1204 Broadway, New York, New York.

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

ORDER

It is ordered, That respondent Massry Importing Co., Ltd., a corporation, its successors and assigns, and its officers, and Louis Massry and Isaac Massry individually and as officers of said corporation and respondents' agents, representatives 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 continued in effect, issued or amended 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 products which gave rise to this complaint, of the flammable

nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the 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 products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a 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 products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since December 3, 1970, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said 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, or 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 the order.

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

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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 individual respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

IN THE MATTER OF
CHOCK FULL O'NUTS CORPORATION, INC.

Docket 8884. Interlocutory Order, March 2, 1973.

Order placing on the Commission's docket for review a subpoena directed to the Secretary of the Commission and issued pursuant to an order of the administrative law judge.

ORDER PLACING ON THE COMMISSION'S DOCKET FOR REVIEW
SUBPOENA ISSUED PURSUANT TO AN ORDER OF THE
ADMINISTRATIVE LAW JUDGE

On its own motion pursuant to Section 3.23(a) of the Commission's Procedures and Rules of Practice, the Commission has determined to place on its docket for review a subpoena *duces tecum* served October 16, 1972, upon Charles A. Tobin, Secretary, Federal Trade Commission, pursuant to an order, dated October 12, 1972, of the administrative law judge. The Commission has further determined that no briefs be filed; that the review be limited to respondent's motion, dated September 28, 1972, complaint counsel's answer thereto, filed October 6, 1972, respondent's reply of October 11, 1972, to complaint counsel's answer, the order of the administrative law judge, dated October 12, 1972, and the subpoena served upon Mr. Tobin on October 16, 1972; and that the issue to be considered is whether the October 16, 1972 subpoena should be quashed; therefore

It is ordered, That the subpoena issued October 16, 1972, by the administrative law judge upon Mr. Tobin, be, and it hereby is, placed on the Commission's docket for review.

Commissioner MacIntyre abstaining.

Order

IN THE MATTER OF
CHOCK FULL O'NUTS CORPORATION, INC.

Docket 8884. Interlocutory order, March 2, 1973.

Order quashing a subpoena directed to the Secretary of the Commission on the grounds that respondent's failed to comply with the provisions of Rule 3.36 and in view of the traditionally privileged character of the documents which the subpoena demands.

ORDER QUASHING SUBPOENA DUCES TECUM

This matter is before the Commission on its own motion. Respondent applied to the administrative law judge, pursuant to Section 3.36 of the Commission's Rules of Practice, for a subpoena *decus tecum* directed to Charles A. Tobin, Secretary, Federal Trade Commission, to produce certain documents from the Commission's records. The administrative law judge, on October 12, 1972, granted the motion and on October 16, 1972 issued the subpoena. By order of October 25, 1972, the Commission, on its own motion, stayed the return date of the subpoena, and, by order of this date, placed the subpoena on its docket for review pursuant to Section 3.23(a) of the Commission's rules.

The subpoena demands:

All charts, graphs, tables, written descriptions or summaries relating in whole or in part, to exclusive buying, quality control and pricing practices in franchise operations, prepared by or for the Commission or staff members in conjunction with the Report of the Ad Hoc Committee on Franchising, June 2, 1969, and in conjunction with any subsequent investigation of the franchise industry or any part thereof, pursuant to paragraph (1) of the attached Order.

Respondent alleges that the information sought above may be relevant to a showing that its challenged practices are not "unfair methods of competition or unfair acts or practices" stating:

* * * When complaint counsel depart from the more conventional guidelines afforded by the antitrust laws and invoke the "unfairness" provisions of Section 5, they necessarily implicate not only the practices of a particular respondent, but also similar trade practices generally. It obviously is relevant to the question whether a practice of Chock's is an unfair method of competition, whether or not the same practice is widely relied upon by other franchisors and its proscription would substantially interfere with business arrangements that enable thousands of small businessmen to become successful entrepreneurs. ("Reply to Answer in Opposition to Respondent's Motions to Produce Documents," October 11, 1972, p. 2).

The administrative law judge has determined that the infor-

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mation sought by the subpoena is relevant for discovery purposes; that is, it "might lead to the discovery of data which would be relevant at an evidentiary trial." While we are not inclined, at this stage in the case at least, to quarrel with this bare-bones finding of relevancy, that finding alone cannot be determinative of the issue in the face of important countervailing considerations.

Initially, it should be noted that Section 3.36 of the Rules of Practice, which authorizes subpoenas to Commission officials provides in part that the application for the subpoena:

shall specify as exactly as possible * * * the general relevance of the material * * * together with a showing that such material, information, or testimony is not available from other sources by voluntary methods or pursuant to Sections 3.33-3.34.

If, as respondent alleges, the complaint in this case threatens industry practices which are both widespread and necessary to serve legitimate functions, it would seem that testimony concerning the ubiquity and value of the challenged practices could be readily obtained from other industry members or experts, without resort to the general search of Commission files authorized here. Certainly no showing has been made, as the rule requires, that the sort of information which the motion seeks is not readily obtainable by other means.

The sorts of documents whose disclosure would be compelled by scrupulous compliance with this broad-gauged subpoena are numerous. They range from staff memoranda summarizing results of investigations of particular companies wholly unrelated to the instant case, and recommending Commission action, to intra-agency communications in which staff, based on study of franchising practices, recommend policy to the Commission. Surely documents whose principal function is to communicate to the Commission advice by the staff concerning policy are highly privileged, and discovery is not warranted absent the most compelling circumstances, which have not been demonstrated here.

A further category of documents falling within the arguable ambit of the above characterization, is written summaries of individual 6(b) reports made by the staff. In point of fact, no industry-wide tabulation of 6(b) returns relating to the franchising practices here at issue has been made. However, staff have transcribed company-by-company responses to a 6(b) questionnaire dealing with the practices here in question and others.

These questionnaires and the staff transcriptions contain highly confidential information, which the Commission has indicated to the providing parties, it will not disclose to any nonemployee, without first notifying them and providing them an opportunity to object to disclosure.

Perhaps respondent would characterize the company-by-company descriptions as mere "raw data" not yet summarized which they state they do not desire. To the extent, however, that the documents may be considered to fall within the flexible terms of the subpoena, the Commission does not believe that the interests of free discovery warrant initiation of the laborious notification process necessary before the Commission may disclose the documents in question.

By provisions 2-5 of the judge's order granting discovery, respondent has already been granted extensive inquiry into complaint counsel's files. No material from the documents covered by the first paragraph of the order pursuant to which the subpoena was issued, is to be used in litigation of the case.

In view of respondent's failure to comply with the provisions of Rule 3.36, and in view of the traditionally privileged character of the documents which the subpoena demands, the Commission has determined that it must be quashed.

It is hereby ordered, That the subpoena to Secretary Tobin be, and it hereby is, quashed.

Commissioner MacIntyre abstaining.

IN THE MATTER OF
WARNER-LAMBERT COMPANY

Docket 8891. Order and Opinion, March 2, 1973.

Denial of respondent's appeal from ruling of administrative law judge striking portions of respondent's answers as irrelevant to the issues raised by the complaint.

OPINION OF THE COMMISSION

This matter is before the Commission on respondent's application for review of an order by the administrative law judge granting complaint counsel's motion to strike portions of certain affirmative defenses from respondent's answer on the ground that

they were not relevant to the issues raised by the complaint. Counsel supporting the complaint have filed an answer in opposition to this application.

The matters stricken from respondent's answer are allegations concerning previous Commission investigation and litigation of charges against claims relating to the efficacy of Listerine Antiseptic. Respondent contends, *inter alia*, that:

24. In the circumstances, the present Complaint is an arbitrary and capricious abuse of the Commission's authority, a violation of the applicable statutes governing Commission proceedings and represents an unlawful attempt to relitigate matters against which the Commission is estopped from proceeding.

33. In the circumstances, the Commission's renewal in this Complaint of the same charges which were not sustained in previous proceedings before this same agency is contrary to the public interest and represents an harassment of respondent offensive to the standards of administrative fairness and substantial justice to which litigants before the Federal Trade Commission are entitled by statute and by constitutional right.

In his order permitting respondent to file an interlocutory appeal, the administrative law judge observed that "There can be little doubt but that these defenses would require lengthy discovery which probably would result in considerable delay as well as result in the introduction of irrelevant evidence at hearings."

The gist of respondent's argument, as we understand it, is that the issues raised by the complaint were decided by the Commission in favor of respondent's predecessor, *Lambert Pharmacal Co.*, in 1944 and that the Commission is barred forever by the doctrine of *res judicata* from again litigating those issues. In the 1944 case, *Lambert Pharmacal Co.* was charged with falsely representing, *inter alia*, that Listerine would cure dandruff and halitosis and that it would prevent colds and sore throat. A majority of the Commission held that there was insufficient proof in the record to sustain the charges and ordered that the complaint be dismissed "without prejudice to the right of the Commission to institute further proceedings should future facts so warrant."

The administrative law judge properly ruled on the basis of our decision *In the Matter of Manco Watch Strap Co., Inc., et al.*, 60 FTC 495, that in the circumstances shown to exist respondent's reliance on the defense of *res judicata* was misplaced. In *Manco*, after having dismissed for failure of proof a prior

complaint containing substantially similar allegations against the respondents in that matter, we held:

The principle of *res judicata*, properly applied, does not require dismissal of the present complaint. We are dealing here with new and different issues of fact and law. The complaint in the first *Manco* case involved acts and practices occurring prior to February 23, 1951; the present complaint covers the period from approximately January 1, 1957, to February 24, 1960. A failure of proof in the first proceeding does not establish a similar failure of proof in every subsequent proceeding based on like allegations.

The point is settled by the Supreme Court's decision in *Federal Trade Commission v. Raladam Co.*, 316 U.S. 149, which followed a prior decision between the same parties, 283 U.S. 643, denying enforcement of a Commission order because of "the inadequacy of the findings and proof, as revealed in the particular record * * *." 316 U.S., at 150-151. The Court stated that "these reasons are not controlling in this case, arising, as it does, out of different proceedings and presenting different facts and a different record for our consideration." *Id.*, at 151. Raladam's plea of *res judicata* was rejected as "without merit." *Id.*, at 152.

Like the second *Raladam* case, this is a new proceeding presenting a new record and new facts. The Commission's authority to take such action as may be proper on the record here is not impaired by the failure of proof found in the earlier record. Were it otherwise, factual deficiencies in a prior proceeding, for whatever reason, would forever bar any later complaint based on new or different facts. Congress deliberately rejected any such limitation on the Commission's power * * *.

In the matter presently before us, as in *Manco*, we are dealing with practices occurring years after the period covered by the previous complaint. Also, as pointed out in complaint counsel's answer, there are other significant differences between the two cases, including the fact that the complaint here is brought under Section 5, instead of Section 12, and challenges labeling claims whereas the prior case did not. *Cf. In the Matter of J. C. Martin Corporation*, 66 FTC 1, *aff'd*, 346 F.2d 147 (3rd Cir. 1965).

Moreover, as stated above, the 1944 case was dismissed without prejudice to the right of the Commission to institute further proceedings should future facts so warrant. In *Hastings Mfg. Co. v. Federal Trade Commission*, 153 F.2d 253 (6th Cir. 1946) the court held "Judicial, as well as quasi-judicial tribunals, do not lose jurisdiction of a cause by its dismissal with a proviso authorizing its reinstatement." The cases are legion where a dismissal without prejudice has been construed as a reservation of a right to reinstate the proceedings." Respondent argues,

however, that the complaint does not allege "future facts" within the meaning of the 1944 order. While the complaint does allege future facts, as indicated above, it is unnecessary that it do so. The future facts which would warrant a new proceeding are those upon which the Commission's decision to issue a complaint are based and, as we have previously held, respondent is precluded from inquiring into our mental processes leading up to that decision. *In the Matter of The Seeburg Corporation*, 70 FTC 1818.

Respondent also argues that the stricken affirmative defenses directly relate to the question of whether or not a violation of Section 5 has occurred, pointing out that in a recent case, *In the Matter of Pfizer Inc.*, Docket No. 8819, July 11, 1972 [81 F.T.C. 23], the Commission concluded that the making of an affirmative product claim in advertising is unfair to consumers unless there is a "reasonable basis" for making that claim. Consequently, respondent contends, a showing that the Commission has on several occasions examined the factual material on which respondent's claims were based and had taken no action with respect thereto would be relevant to the issue of whether respondent had a reasonable basis for making the claims. This argument is also rejected. The complaint in this case, unlike that in *Pfizer*, does not charge as a separate violation that respondent did not have a reasonable basis for its claims. It alleges that respondent's claims are false, misleading and deceptive. Whether or not respondent had a reasonable basis for making such claims is therefore totally irrelevant.

Also rejected is the argument that the stricken affirmative defenses are relevant to the issue of whether the order should contain a "corrective advertising" provision. A determination that corrective advertising is required would not under any circumstances turn on the presence or absence of respondent's good faith in making the claims, as suggested in respondent's application.

Respondent also contends that it has been foreclosed from raising issues relating to administrative fairness, *i.e.*, to argue that repeated Commission action challenging claims for Listerine amounts to harassment. It appears from the stricken portion of respondent's answer that in 1932 the Commission conducted, and later closed, an investigation of claims concerning the efficacy of Listerine in the treatment of colds and sore

throats. Subsequent to dismissal of the aforementioned complaint against respondent's predecessor in 1944, the Commission communicated with respondent on three occasions concerning its advertising of Listerine—in 1951 and 1962 it requested specimens of Listerine advertising and data supporting the claims therein and in 1957 it entered into a stipulation with respondent whereby the latter agreed to discontinue the use of certain claims concerning the efficacy of Listerine in preventing Asian Flu. We believe that the argument that these investigations over a 40 year period amount to harassment borders on the frivolous. It is therefore rejected.

For the foregoing reasons, we find no error in the ruling by the administrative law judge striking as irrelevant the aforementioned portions of respondent's answer. Respondent's appeal from this ruling will therefore be denied. An appropriate order will be entered.

ORDER DENYING INTERLOCUTORY APPEAL

The Commission having permitted respondent to appeal from the ruling by the administrative law judge on October 13, 1972, striking portions of respondent's answer as irrelevant to the issues raised by the complaint herein and having determined for the reasons stated in the accompanying opinion that the appeal should be denied:

Accordingly, *It is ordered*, That respondent's appeal from the aforesaid ruling of the administrative law judge be, and it hereby is, denied.

Commissioner MacIntyre dissenting.

IN THE MATTER OF ARA SERVICES, INC.

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

Docket C-2360. Complaint, March 8, 1973—Decision, March 8, 1973.

Consent order requiring the nation's largest wholesaler of periodicals and paperback books, located in Philadelphia, Pennsylvania, among

Complaint

82 F.T.C.

other things to divest itself of certain acquisitions challenged as anti-competitive by the Commission. Respondent is further prohibited from acquiring any corporate stock or assets without prior Federal Trade Commission approval and required to cease coercing and intimidating its competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named above has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) and/or Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45) through the acquisition of the stock or assets of various firms described herein, hereby issues its complaint pursuant to the provisions of Section 7 of the aforesaid Clayton Act and Section 5 of the Federal Trade Commission Act stating its charges in this respect as follows:

DEFINITIONS

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

(a) "Wholesaler"—any person or firm engaged in the business of purchasing and reselling periodicals or paperbacks to newsstands, bookstores, variety stores and other retail outlets. Includes any such person or firm, whether designated as wholesaler, wholesale agency, wholesale distributor, rack jobber, or otherwise. Includes both "city operation" and "reship operation wholesalers."

(b) "City operation"—a wholesale operation whereby delivery to retail outlets is effected by the use of vehicles operated by the wholesaler.

(c) "Reship operation"—a wholesale operation whereby delivery to retail outlets is effected by mail or common carrier and the wholesaler is paid a special rate by the publishers for incurring this added expense.

(d) "Periodicals"—paper cover magazines and comic books. Excludes newspapers. Excludes hard cover materials.

(e) "Paperbacks"—paperbound books. Excludes hard cover publications.

ARA Services, Inc.

2. Respondent, ARA Services, Inc., formerly Automatic Retailers of America, Inc., is a corporation organized in February 1959, *sub nomine*, Davison 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 herein as "ARA") is the largest wholesaler in the United States of periodicals and paperbacks for resale through newsstands and other retail outlets. ARA is one of the largest suppliers of vending and manual food services in the United States and is also engaged in such business in the Dominion of Canada and in Puerto Rico. ARA also is engaged in supplying retailer promotional services and professional management and technical consulting services, including professional construction contract management and consulting.

4. ARA's total revenue, net income, and total assets have increased in each year at least since 1962. In 1967, the year preceding the first of the acquisitions, described in Paragraphs 11 through 22 hereof, ARA's consolidated domestic revenue was \$366,012,000; net income, after tax, was \$9,545,000; and total assets at year's end were \$159,882,000. In 1970, ARA's consolidated domestic sales were \$648,399,000; net income after taxes was \$18,610,000; and total assets at year's end amounted to \$285,707,000.

5. At least since September 1968, respondent regularly has purchased and received from out-of-state sources a substantial amount of goods purchased by it for resale in the United States. In the course and conduct of its business, ARA is engaged in commerce, as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act, and has been continuously so engaged, at least since September 1968.

Trade and Commerce

6. The distribution and sale by wholesalers of periodicals and paperbacks to retail outlets, such as newsstands, drug stores

and variety stores, represents more than \$500 million in sales annually. Although such publications are on occasion purchased by retailers directly from publishers, the overwhelming majority of periodicals and the majority of paperbacks are purchased by retail outlets from wholesalers.

7. In the United States, there are approximately 600 local wholesalers which service retail accounts with periodicals and paperbacks in urban areas by use of the wholesalers' own vehicles. Retail accounts in rural areas, and areas where direct delivery by a city operation wholesaler are not feasible, are often serviced by reship operations which utilize mail and common carrier to accomplish delivery. There are presently about 11 reship operations in the United States.

8. Most paperback and periodical publishers use the services of "national distributors" in their dealings with the wholesalers. These national distributors may handle only paperbacks and periodicals they publish themselves or they may represent as many as 60 outside publishers. There are about 16 national distributors which supply most of the periodicals and paperbacks that are handled by the wholesalers in the United States.

9. Local wholesalers constitute the most convenient and sometimes the only feasible source of supply for most periodicals and paperbacks of a type sold by most newsstands, variety stores, drug stores and other retail outlets. One wholesaler usually serves all retailers in any given geographic area.

10. ARA's growth in wholesale periodical and paperback distribution has come about through a series of acquisitions, hereinafter specified, beginning in or about September 1968, with its first acquisition in this field. By the year 1969, ARA accounted for about 9.4 percent of the sales by all wholesalers in the United States. As a result of additional acquisitions, in 1970 it raised its national market share to about 12 percent and to about 16 percent in 1971. ARA's acquisitions of city and reship operation wholesale agencies enabled it in 1971 to account for about 50 percent of the sales by all wholesalers for the State of California, almost 100 percent for the States of Hawaii and Oklahoma, and about 80 percent of sales to rural areas in the United States which are serviced by reship operations.

The Acquired Companies

11. In or about September 1968, ARA acquired all or substantially all of the stock of twelve affiliated companies (hereinafter referred to as the "District News Group"), including the following named companies:

(a) District New Company, Inc. (a Delaware corporation)—a city operation engaged in publication distribution in and around Washington, D.C.

(b) Norfolk News Agency, Inc. (a Virginia corporation)—a city operation engaged in publication distribution in and around Norfolk, Virginia.

(c) Peninsula News Company, Inc. (a Virginia corporation)—a city operation engaged in publication distribution in and around Newport News, Virginia.

(d) Milwaukee News Company, Inc. (a Virginia corporation)—a city operation engaged in publication distribution in and around Milwaukee, Wisconsin.

The District News Group also operated newsstands and ancillary food and gift shop services at seven different airports and at one major hotel.

Sales in 1967 for the District News Group were about \$22,170,000, and profits were about \$817,000.

12. In or about April 1969, ARA acquired all or substantially all of the stock of Sunset News Company (a California corporation)—a city operation engaged in publication distribution in and around Los Angeles, California. For the period of from January 28, 1968 to December 28, 1968, this company had sales of \$8,703,515, net earnings of \$986,761 and total assets of \$902,768.

Upon consummation of the acquisitions described in this Paragraph 12 and in Paragraph 11 above, ARA had acquired approximately 5 percent of the annual sales by all wholesalers in the United States. The acquisitions specified in those paragraphs provided ARA with bases of operation in the wholesale periodical and paperback distribution business on both the east and west coast and in the Northern Midwest areas of the United States.

13. In or about April 1969, ARA acquired all or substantially

all of the stock of Golden Gate Magazine Company and affiliated companies (hereinafter referred to as the "Golden Gate Group"). At the time of acquisition, the group, all California corporations, included:

(a) Golden Gate Magazine Company—a city operation engaged in publication distribution in and around San Francisco, California. For the year ending February 28, 1969, this company had sales of \$4,039,426, retained earnings of \$158,478, and total assets of \$1,180,294.

(b) Western News Supply Company—a reship operation located in Fresno, California, engaged in publication distribution in the States of California and Nevada. For the year ended March 31, 1969, this company had sales of \$2,682,888, retained earnings of \$57,062, and total assets of \$777,951.

(c) Independent Magazine Distributing Company—a city operation engaged in publication distribution in and around San Pedro, California. For the year ended March 31, 1969, this company had sales of \$1,984,088, net profit of \$60,365, and total assets of \$740,612.

(d) Redwood News Agency, Inc.—a city operation engaged in publication distribution in and around Healdsburg, California.

(e) Redding Red Bluff News Agency—a city operation engaged in publication distribution in and around Redding, California.

14. In or about September 1969, ARA acquired all or substantially all of the stock of Downs News Agency (a sole proprietorship)—a city operation engaged in publication distribution in and around Fredericksburg, Virginia.

15. In or about October 1969, ARA acquired all or substantially all of the stock of Inter-City Magazine Company, Ltd. and affiliated companies (hereinafter referred to as the "Inter-City Group"). Companies acquired included:

(a) Capital News, Inc. (a California corporation)—a city operation engaged in publication distribution in and around Sacramento, California. For the year ended May 31, 1969, this company had sales of \$2,219,750, net income of \$119,499, and net assets of \$1,023,026.

(b) Hawaiian Magazine Distributors (a limited partnership)—a city operation engaged in publication distribution in and around Honolulu, Hawaii. For the year ended January 31, 1969,

this company had sales of \$4,114,168, profits of \$738,820, and assets of \$1,916,725.

(c) Inter-City Magazine Co., Ltd. (a partnership)—a city operation engaged in publication distribution in and around Burbank, California. For the year ended March 31, 1969, this company had sales of \$7,409,511, profits of \$580,912, and assets of \$2,899,565.

(d) Keenan News, Inc. (a corporation)—a city operation engaged in publication distribution in and around Spokane, Washington. For the year ended June 30, 1969, this company had sales of \$1,077,098, retained earnings of \$186,474 and assets of \$381,819.

(e) Yakima News, Inc. (a corporation)—a city operation engaged in publication distribution in and around Yakima, Washington. For the year ended May 31, 1969 this company had sales of \$516,934, net income of \$44,016 and assets of \$171,220.

(f) Buchanon News Agency, Inc. (a corporation)—a wholesale agency engaged in publication distribution in and around Pasco, Washington.

16. In or about January 1970, ARA acquired all or substantially all of the stock of Northwest Magazine Distribution Company (a Washington corporation)—a reship operation located in Seattle, Washington and engaged in publication distribution in the States of Washington, Idaho, Montana, Oregon and Alaska. For the year ended September 30, 1969, this company had sales of \$2,457,489, net income of \$223,684, and total assets of \$598,344.

17. In or about March 1970, ARA acquired all or substantially all of the stock of Pioneer News Company (a California corporation)—a city operation engaged in publication distribution in and around Roseville, California. For the year 1969, this company had sales of \$905,268, profits of \$21,709, and total assets of \$214,917.

18. In or about April 1970, ARA acquired all or substantially all of the stock of Davinroy News Agency (a sole proprietorship)—a city operation engaged in publication distribution in and around Stockton, California. For the year ended May 8, 1970, this company had sales of about \$900,000 and profits of about \$27,000.

19. In or about June 1970, ARA acquired all or substantially

all of the stock of Blue Ridge News Agency (a sole proprietorship)—a city operation engaged in publication distribution in and around Frederick, Maryland. For the year ended April 23, 1970, this company had sales of about \$360,000.

20. In or about September 1970, ARA acquired all or substantially all of the stock of Harris County News, Inc. (a Texas corporation)—a city operation engaged in publication distribution in and around Houston, Texas. For the year ended December 31, 1969, this company had sales of \$4,362,896, net income of \$248,252, and assets of \$1,157,024.

21. In or about September 1970, ARA acquired all or substantially all of the stock of San Diego Periodical Distributors (a California corporation)—a city operation engaged in publication distribution in and around San Diego and Imperial Counties, California. For the year ended May 1, 1970, this company had sales of \$6,243,102, net profits of \$260,674, and assets of \$2,174,077.

22. In or about April 1971, ARA acquired all or substantially all of the stock of Mid-Continent News Company, and affiliated corporations, partnerships, and proprietorships (hereinafter referred to as the "Mid-Continent Group"). At the time of acquisition, this group's main business activity was publication distribution, but to a more limited extent it also distributed records, record tapes, and players, and, in addition to its wholesale operations, it operated some retail outlets. The Mid-Continent Group were:

(a) Mid-Continent News Company, a Delaware corporation, comprised of the following city and reship operations:

1. A reship operation (d/b/a Everest News Company) located in Oklahoma City, Oklahoma;

2. A city operation (d/b/a Oklahoma News Agency) engaged in publication distribution in and around Oklahoma City, Oklahoma;

3. A reship operation (d/b/a Mid-Continent Reship of Rome, Georgia) located in Rome, Georgia;

4. A reship operation (d/b/a Temtex News Company) located in Temple, Texas;

5. A city operation (d/b/a Mid-Missouri News Agency, Inc., a Missouri corporation) engaged in publication distribution in and around Columbia, Missouri;

6. A reship operation (d/b/a Missouri-Kansas Reship or Mo-Kan Reship) located in Columbia, Missouri.

For the year ended March 31, 1970, Mid-Continent News Company had sales of \$9,839,623, net profits of \$89,665, and assets of \$3,153,480.

(b) Publishers News Company of Dakota, a Dakota corporation, comprised of the following city and reship operations:

1. A reship operation (formerly Publishers News Company of Minnesota, a Minnesota corporation) located in Brainerd, Minnesota. For the year ended June 30, 1970, this operation had sales of \$1,615,411, net profits of \$56,062, and assets of \$961,650.

2. A reship operation located in Aberdeen, South Dakota. For the year ended June 30, 1970, this operation had sales of \$801,103, net profits of \$61,194, and assets of \$859,939.

3. A reship operation (formerly Northeast News Company, Inc., a Pennsylvania corporation) located in Kingston, New York. For the year ended December 31, 1969, this operation had sales of \$1,131,607, net profit of \$1,078, and assets of \$419,877.

4. A reship operation (formerly Publishers News Company of Nebraska, a Nebraska corporation, and Publishers News Company of Iowa, an Iowa corporation) located in Atlantic, Iowa. For the year ended June 30, 1970, Publishers News Co. of Nebraska has sales of \$692,750, net profits of \$43,431, and assets of \$385,520. For the year ended June 30, 1970, Publishers News Co. of Iowa had sales of \$1,884,617, net profits of \$84,455, and assets of \$1,446,589.

5. A city operation (formerly Pikes Peak News Agency, a Colorado corporation) engaged in publication distribution in and around Colorado Springs, Colorado. For the year ended December 31, 1969, this operation had sales of \$1,040,331, net profit of \$54,424 and assets of \$328,647.

6. A city operation (d/b/a Illinois and Iowa News Agency) engaged in publication distribution in and around Davenport, Iowa.

(c) Beck News Agency (a sole proprietorship)—a city operation engaged in publication distribution in and around Albuquerque, New Mexico. As of June 30, 1970, this operation had assets of \$600,893.

(d) Oklahoma News Company, a general partnership, comprised of the following city operation agencies:

1. A city operation (d/b/a Oklahoma News Company) engaged in publication distribution in and around Tulsa, Oklahoma.

2. A city operation (d/b/a Whites News Agency) engaged in publication distribution in and around Ponca City, Oklahoma.

For the year ended December 31, 1969, Oklahoma News Company had sales of \$4,638,490, profits of \$396,733, and assets of \$140,865.

(e) Oklahoma News Company, Ltd. (a Texas corporation)—a reship operation located in Texarkana, Texas. As of June 30, 1970 this operation had assets of \$140,865.

(f) White Operating Companies, Inc., an Oklahoma corporation whose sole business asset at the time of acquisition was a 40 percent interest in the general partnership known as Oklahoma News Company.

23. At the time of ARA's acquisition of the Mid-Continent Group, the Mid-Continent Group reship operations were engaged in publication distribution by means of reshipping in about forty-three states including Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and in the District of Columbia.

24. At all times relevant herein, the aforesaid acquired firms described in Paragraphs 11 through 22 were engaged in commerce within the meaning of the Federal Trade Commission Act and the Clayton Act and, except for Harris County News Inc., constituted monopolies or near monopolies of wholesale periodical and paperback distribution business in their respective markets. After the acquisitions took place, a substantial part, if not all, of the assets obtained by ARA became a part of the interstate business of ARA and have been used for the benefit and enhancement of its interstate operations. At the time of the acquisitions, each of these firms regularly purchased and

received from out-of-state sources a substantial amount of goods purchased by it for resale.

COMPETITIVE EFFECTS OF THE ACQUISITIONS

25. The effect of respondent's acquisitions, both individually and collectively, of the firms described in Paragraphs 13 through 22, may be substantially to lessen competition or to tend to create a monopoly in the purchase at wholesale and in the wholesale distribution of periodicals and/or paperbacks in the United States and in various geographic markets thereof, in the following ways, among others:

(a) ARA has obtained or may obtain substantial economic power over publishers and national distributors and over the sale of periodicals and paperbacks by them.

(b) ARA has obtained or may obtain decisive economic power in the various geographic markets in which it operates over actual or potential competing wholesalers of periodicals and paperbacks.

(c) ARA has or may have further entrenched the economic power of acquired firms in the various geographic markets in which they operated and has or may have enhanced and increased barriers to entry in local geographic markets in which ARA operates wholesale periodical and paperback businesses.

(d) The emergence of new competition generally in ARA markets has been or may be inhibited or restrained.

(e) Potential competition between ARA and the acquired companies, and among the acquired companies, has been eliminated.

THE VIOLATIONS CHARGED

26. The acquisition by ARA of the stock and assets of the aforesaid firms described in Paragraphs 13 through 22 together with the cumulative effect thereof as hereinbefore alleged in this Count I constitute violations of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18), and Section 5 of the Federal Trade Commission Act (U.S.C. 15, Section 45) as amended.

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, with its office and principal place of business located at Independence Square, West, 6th at Walnut Street, in the city of Philadelphia, State of Pennsylvania.

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, ARA Services, Inc., (hereafter "ARA"), a corporation, and its successors and assigns, shall divest all stocks, assets, properties, rights, privileges and interests of whatever nature, tangible and intangible, acquired by ARA as the result of its acquisitions of stock or assets of the following periodical and paperback book wholesaling operations:

- (1) Mid-Continent Reship of Rome, Georgia;

(2) Illinois and Iowa News Agency of Davenport, Iowa; together with all additions and improvements to said operations which have been added to them since the acquisitions of such operations by respondent; and

(3) a portion of its territory in the Los Angeles metropolitan area totaling net sales of paperbacks and periodicals of at least three million dollars (\$3,000,000) based upon 1972 fiscal year figures: *Provided, however,* That the sale of such territory shall include all assets necessary to establish a viable periodical and paperback book wholesale operation.

All said divestitures shall be to a party who will utilize said stocks, assets, properties, rights, privileges and interests of whatever nature, in the wholesaling of periodicals and paperback books.

All said divestitures shall be absolute, shall be subject to prior approval by the Federal Trade Commission, and shall be accomplished no later than one year from the date of service of this order on respondent.

II

It is further ordered, That the divestiture required by Paragraph I of this order shall not be effected directly or indirectly to any person who is 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, within sixty (60) days from the date of service of this order upon respondent, and every thirty (30) days thereafter until all divestitures pursuant to Paragraph I of this order are accomplished, respondent shall submit, in writing, to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with the order. All compliance reports shall include, among other things that are from time to time required, (a) the steps taken to accomplish the required divestiture; and, (b) copies of all documents, reports, memoranda, communications and correspondence concerning or relating to the divestitures.

IV

It is further ordered, That respondent shall make no acquisition, directly or indirectly, of any concern, or any interest in any concern, engaged in periodical and paperback book wholesaling operations until the divestiture required by this order shall have been completed.

Pending completion of such divestiture respondent shall maintain and operate the business of each operation to be divested pursuant hereto in the same manner and form as of the date the complaint herein issued, and shall not commingle any assets, properties, financing, business or operations of such assets with its own, and shall take no steps to impair or otherwise adversely affect the economic, competitive and financial strength of any such operation.

V

It is further ordered, That, for a period of ten (10) years from the date of approval of the last divestiture required by this order, respondent shall, without prior Commission approval, cease and desist from acquiring, directly or indirectly, (1) any concern, or any interest in any concern, engaged in any periodical and paperback book wholesale operation where the principal service area of such concern is located in California, District of Columbia, Hawaii or Oklahoma; (2) any periodical and paperback book wholesale operation in the United States where the business of such concern is 25 percent or more reship sales; (3) any city operation for the sale of periodicals and paperbacks at wholesale, including any secondary distributors, where the principal service area of such concern is adjacent to, or in whole or in part co-extensive with the principal service area or areas of any city operation owned or controlled by respondent.

VI

It is further ordered, That, for a period of ten (10) years from the date of approval of the last divestiture required by this order, respondent shall not acquire, without prior Commission approval, any wholesaler of periodicals or paperback books, *Provided* That prior approval shall not be required if at the time of any acquisition of a wholesaler of periodicals or paperback books respondent has previously and subsequent to the date of

service of this order made sales or other divestitures (in addition to those divestitures enumerated in Paragraph I of this order) to an eligible purchaser or purchasers of one or more of respondent's periodical and paperback book wholesaling operations accounting for a total annual volume of net wholesale sales at least equal to the annual volume of net wholesale sales of periodicals and paperback books of the acquired wholesalers; and *Provided Further* That any acquisition for which prior Commission approval shall not be required shall be preceded by sixty (60) days notice to the Federal Trade Commission. Said notice shall be accompanied by a complete special merger report, describing the operation or operations to be acquired and the operations divested and the market shares of each and the dollar asset size and gross and net dollar and unit sales of each such operation, the geographic area served by each, and such additional information as may be required by the Federal Trade Commission.

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

VII

It is further ordered, That, respondent, ARA Services, Inc., a corporation, its officers, agents, representatives and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, shall not:

(1) Exclude or attempt to exclude actual or potential competition for the sale of periodical and paperback publications by agreement or understanding, expressed or implied, between respondent and its competitors or potential competitors, or by threats, expressed or implied, made by respondent to its competitors or potential competitors.

(2) Exclude or attempt to exclude actual or potential competition for the sale of periodical and paperback publications by attempting to influence publishers and/or na-

tional distributors of periodicals and paperbacks not to supply their publications to its competitors or potential competitors.

VIII

Eligible Purchaser, for purposes of Paragraph VI of this order shall, unless specifically approved by the Commission, exclude:

- (1) any company in which respondent has a one (1) percent or more legal or equitable interest;
- (2) any city operation in the United States, including any secondary distributor, whose principal service area is adjacent to, contiguous with, or in whole or in part co-extensive with the principal service area of any of respondent's wholesale distribution operations;
- (3) any company owned in whole or in part by respondent within a period of seven (7) years prior to the date of this order; and
- (4) any company which for the last annual reporting period prior to the acquisition, has or controls at the date of the agreement for the sale of said ARA wholesale operations, \$25,000,000 of annual net wholesale sales of periodicals and paperback books.

IX

It is further ordered, That respondent shall not repurchase any wholesale distributor sold by it within ten (10) years preceding the date of approval of the last divestiture required by this order.

X

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

XI

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.

XII

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 has complied with this order.

IN THE MATTER OF
LACE OF FRANCE, INC., ET AL.

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

Docket C-2361. Complaint, March 8, 1973—Decision, March 8, 1973.

Consent order requiring a New York City seller and distributor of textile fiber products, 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 Lace of France, Inc., a corporation, and Otto Heller, 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 Lace of France, 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 989 Avenue of the Americas, New York, N.Y.

Respondent Otto Heller is an officer and an individual of the corporate respondent whose address is located at 989 Avenue of the Americas, New York, New York. 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 purchase, sale and distribution of textile fiber products, including, but not limited to, textile piece goods.

PAR. 2. Respondents are now and for some time last past, have been engaged in 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, fabric as the terms "commerce" 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 products mentioned hereinabove were textile piece goods.

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 Lace of France, 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 989 Avenue of the Americas, New York, New York.

Respondent Otto Heller is an officer and individual of said corporation whose address is located at 989 Avenue of the Americas, 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 respondents Lace of France, Inc., a corporation, its successors and assigns, and its officers and Otto Heller, 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 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 re-

ceived 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 fabric which gave rise to the complaint, of the flammable nature of said fabric and effect the recall of said fabric from such customers.

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

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 fabric which gave rise to the complaint, (2) the amount of said fabric in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect the recall of said fabric from customers, and of the results thereof, (4) any disposition of said fabric since March 23, 1971, and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric, 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, or 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 and address, 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
AMERICAN STATES DEVELOPMENT CORPORATION,
ET AL.

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

Docket C-2362. Complaint, March 9, 1973—Decision, March 9, 1973.

Consent order requiring an Indianapolis, Indiana, training school for truck drivers and its subsidiaries, among other things to cease misrepresenting the nature of respondents' business; failing to disclose that inquirers to respondents' advertising will be visited by sales representatives; misrepresenting offers of employment; misrepresenting the quality or nature of training equipment available; misrepresenting the nature or purpose of any fees paid by prospective purchasers to respondents; misrepresenting the terms and conditions under which payment for courses may be made; failing to disclose to customers their rights to a cooling-off period in which they may cancel their sales contract and receive a refund of all monies paid and failing to make refunds upon request.

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American States Development Corporation, a corporation, Transport Systems, Inc., a corporation, Express, Inc., a corporation, and Tom Johnson, individually and as an officer of the said corporations, and also doing business as Empire Express, Inc., and doing business as Astro Systems, Inc., and J. C. Triplett, individually and as an officer of the said American States Development Corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American States Development Corporation 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 1414 South West Street, Indianapolis, Indiana.

Respondent Transport Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 1414 South West Street, Indianapolis, Indiana.

Respondent Express, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 1414 South West Street, Indianapolis, Indiana.

Respondent Tom Johnson is an officer of respondents American States Development Corporation, Transport Systems, Inc., and Express, Inc., and also does business as Astro Systems, Inc., and as Empire Express, Inc. He formulates, directs and controls the acts and practices of the corporate respondents American States Development Corporation, Transport Systems, Inc., and Express, Inc. His address is the same as that of said corporations.

Respondent J. C. Triplett is an officer of respondent American States Development Corporation. He formulates, directs and controls the policies, acts and practices of respondent American States Development Corporation, including the acts and prac-

tices herein set forth. His address is the same as that of said corporation.

The respondents herein, have in the past, cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale and distribution of courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers and related occupations. Said courses consist of a series of lessons pursued by correspondence through the United States mails and a period of in-residence training at a place designated by respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the correspondence portion of their courses, when sold, to be sent from respondents' place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Respondents utilize the services of salesmen who induce prospective purchasers of respondents' courses located in states other than the State of Indiana to call on said salesmen at respondents' offices. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of a commercial nature. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of obtaining leads to prospective purchasers of their courses, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspapers advertisements containing statements and representations regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive of such advertisements is the following:

SEMI DRIVERS NEEDED

Over age 21, Married or Single, good physical condition, some experience or willing to learn to earn high wages driving Semi Tractor Trailers, Local or Over the Road. Midwest, Mideast and Southern areas. For application write % Trucks P. O. Box 40456, Indianapolis, Ind., 46205, or call (317) 784-1348.

PAR. 5. By and through the use of the statements and representations contained in the advertisement set forth in Paragraph Four and others of similar import and meaning but not expressly set out herein, respondents represent, directly or by implication, that:

1. Respondents operate a trucking company.
2. Respondents are offering employment to qualified applicants who will be trained as truck drivers.

PAR. 6. In truth and in fact:

1. Respondents did not, and do not, operate a trucking company.
2. Respondents do not offer employment to persons who will be trained as truck drivers. The real purpose of such advertisements is to obtain leads to prospective purchasers of respondents' courses of study and instruction.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to advertisements seeking leads to prospective purchasers to visit respondents' salesmen at respondents' offices. For the purpose of inducing the sale of respondents' courses, such salesmen make to prospective purchasers many statements and representations, direct and by implication, regarding opportunities for employment as truck drivers available to purchasers of respondents' courses, the assistance furnished to respondents' graduates in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents and other statements and representations are made orally by said salesmen. Among and typical, but not all inclusive, of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train drivers and, therefore, employment as a truck driver is assured to persons completing respondents' course.
2. Respondents operate and maintain school facilities, and that respondents provide training and instruction for prospective truck drivers at these school facilities.

3. Respondents will train enrollees on the best and most up-to-date trucks and auxiliary equipment available in the trucking industry.

4. Persons completing respondents' course will thereby be qualified for employment as local or over-the-road truck drivers without further training or experience.

5. Persons enrolling in respondents' course are required to post a bond or pay an insurance fee.

6. Payment of the balance of the cost of respondents' course remaining after the initial or registration fee has been paid can be deferred until after the student has completed the course and obtained employment as a truck driver.

7. To other prospective purchasers of respondents' course, representations have been made that respondents will handle or arrange financing of the balance of the cost of respondents' course remaining after the initial or registration fee has been paid.

8. Persons enrolling in respondents' courses of study and instruction will receive a full refund of all monies paid to respondents upon request at any time prior to beginning the resident training portion of respondents' courses.

9. Respondents have a placement service which will secure a job as a local or over-the-road truck driver for graduates of respondents' course and such a job is assured for everyone who wants to work.

10. Graduates who desire employment in a particular geographic area are assured of a job in the area of their choice.

PAR. 8. In truth and in fact:

1. Respondents have not been requested by trucking companies to train drivers and, therefore, employment as a truck driver is not assured to persons completing respondents' course.

2. Respondents do not operate and maintain school facilities that provide training and instruction for prospective truck drivers. Respondents have no school or training facilities whatsoever and send all enrollees to an independent truck driver training school.

3. Respondents own no trucks or auxiliary equipment whatsoever. The equipment provided by the independent training school is of poor quality and is often inoperable.

4. Persons completing respondents' course are not thereby

qualified for employment as local or over-the-road truck drivers without further training or experience.

5. The sum of money that enrollees in respondents' course are required to pay is not a bond or an insurance fee but is a non-refundable registration fee.

6. Respondents generally require that the balance of the cost of respondents' course remaining after the initial or registration fee has been paid must be paid before the student can attend the resident training portion of the course and do not permit students to defer such payments until after employment as a truck driver has been obtained.

7. Respondents seldom if ever handle or arrange financing to enable purchasers of respondents' course to pay the balance of the cost.

8. Respondents will not make refunds to persons who have requested refunds and have not begun the resident training portion of respondents' course.

9. Respondents do not have a placement service which will secure a job as a local or over-the-road truck driver for graduates of respondents' course and such a job is not assured for everyone who wants to work.

10. Graduates who desire employment in a particular geographic area are not assured of any job much less a job in the area of their choice.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, 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, institutions, and organizations of various kinds, engaged in the sale and distribution of similar courses of study and instruction.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce a substantial number thereof to purchase respondents' said courses of study or instruction 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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent American States Development Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal place of business located at 1414 South West Street, city of Indianapolis, State of Indiana.

Respondent Transport Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 1414 South West Street, city of Indianapolis, State of Indiana.

Respondent Express, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal place of business located at 1414 South West Street, city of Indianapolis, State of Indiana.

Respondent Tom Johnson is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal place of business is located at the above stated address. Respondent Tom Johnson also does business as Empire Express, Inc., and as Astro Systems, Inc., also at the above stated address.

Respondent J. C. Triplett is an officer of said respondent American States Development Corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents American States Development Corporation, a corporation, Transport Systems, Inc., a corporation, and Express, Inc., a corporation, their successors and assigns, and their officers, and Tom Johnson, individually and as an officer of said corporations, and doing business as Empire Express, Inc. and Astro Systems, Inc., and J. C. Triplett, individually and as an officer of American States Development Corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study and instruction in truck driving or any other subject, trade or vocation, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any respondent is a trucking company; misrepresenting, in any manner, the nature of business of any respondents.

2. (a) Failing to disclose, clearly and conspicuously, in advertisements seeking leads to prospective purchasers of respondents' courses, in catalogs, brochures and on letterheads that respondents' business is that of a seller of a course of study and instruction for prospective truck drivers, and related occupations, not affiliated with any trucking company.

(b) Failing to disclose, clearly and conspicuously, in advertisements seeking leads to prospective purchasers of respondents' courses which are sold through sales representatives, that inquirers will be visited by respondents' sales representatives.

3. Representing, directly or by implication, that employment is being offered when the real purpose of such offer is to obtain leads to prospective purchasers of respondents' courses.

4. Failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.

5. Representing, directly or by implication, that respondents have been requested to train drivers by any trucking company; misrepresenting, in any manner, respondents' connection or affiliation with the trucking industry or any member thereof.

6. (a) Representing, directly or by implication, that respondents operate a training school or facility for prospective truck drivers.

(b) Representing, directly or by implication, that enrollees in respondents' course in truck driver training will be trained on the best and most up-to-date truck driver training equipment available; misrepresenting, in any manner, the quality or nature of truck driver training equipment available for enrollees' training.

7. (a) Representing, directly or by implication, that persons completing respondents' course in truck driver training will thereby be qualified for employment as local or over-the-road truck drivers without further training or experience; misrepresenting, in any manner, the con-

tent, completeness or effect of any of respondents' courses.

(b) Failing to disclose, in writing, clearly and conspicuously, to each prospective purchaser of respondents' courses of study and instruction before said prospective purchasers have paid any money or fee to respondents that respondents cannot guarantee or assure employment to graduates of their courses of study and instruction; and that further training and experience may be required before a graduate of respondents' courses of study and instruction will be regarded as fully trained in the occupation for which respondents' training has been offered.

8. Representing, directly or by implication, that enrollees in respondents' course in truck driver training are required to post a bond or pay an insurance fee; misrepresenting, in any manner, the nature or purpose of any fee which must be paid by enrollees in respondents' courses.

9. (a) Representing, directly or by implication, that the balance of the cost of respondents' course remaining after the initial or registration fee has been paid can be deferred until after the student has completed the course and obtained employment as a truck driver;

(b) Representing, directly or by implication, that respondents will handle or arrange the financing of any portion of the cost of respondents' course;

(c) Misrepresenting, in any manner, the terms or conditions under which payment may be made for respondents' courses.

10. (a) Failing to notify, in writing, each purchaser of respondents' courses of study and instruction, before said purchaser makes any payment to respondents, that said purchaser has a right to request a refund at any time prior to his beginning of the resident training portion of respondents' courses of study and instruction.

(b) Failing to refund to each purchaser of respondents' courses of study and instruction, upon such purchaser's written request prior to said purchaser's attendance at respondents' resident training portion of respondents' courses of study and instruction, said pur-

chaser's initial or registration fee and all of any other fee paid to respondents. Said refund must be made within thirty (30) days from the date of said purchaser's written request for refund.

11. Representing, directly or by implication, that respondents' placement service will guarantee or assure the placement of graduates in jobs for which respondents' courses are represented to train them, or will guarantee or assure the placement of graduates in such jobs in the geographical area of their choice; misrepresenting, in any manner, respondents' ability or facilities for assisting graduates of their courses in obtaining employment.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in selling respondents' courses of study and instruction and secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

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

It is further ordered, That respondents Tom Johnson and J. C. Triplett, for a period of three (3) years, commencing sixty (60) days after this order becomes final, each shall notify the Commission annually of the name and address of each corporation, partnership, or other business entity, engaged in the advertising, offering for sale, sale or distribution of courses of study in truck driving or any other subject, trade or vocation, in which said respondents are directors, stockholders, officers, employees or maintain any other interest.

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

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the manner and form in which they have complied with this order.

IN THE MATTER OF
THE BENDIX CORPORATION, ET AL.

Docket 8739. Interlocutory Order, March 12, 1973.

Subpoena issued by the administrative law judge directed to the Secretary of the Commission placed on the Commission's own docket for review with the determination that filing of briefs is not appropriate, the review to be limited to whether subpoenaed memorandum constitutes part of the decision-making process of the Commission and whether disclosure of the document will inhibit free expression of opinion within the Commission.

ORDER PLACING SUBPOENA ISSUED BY ADMINISTRATIVE
LAW JUDGE TO COMMISSION SECRETARY ON THE
COMMISSION'S DOCKET FOR REVIEW

On its own motion, the Commission, pursuant to Section 3.23(a) of the Commission's Rules of Practice, has determined to place on its docket for review the subpoena issued by the administrative law judge in the above matter on February 15, 1973, directing Charles A. Tobin, Commission's Secretary, to produce a "staff memorandum * * * asking for permission to conduct or recommending the 'investigation into the Acts and Practices of Companies Manufacturing Automotive Parts, Accessories and Equipment.'" The Commission has further determined that the filing of briefs is not appropriate; therefore

It is ordered, That the subpoena issued by the administrative law judge on February 15, 1973, be, and it hereby is, placed on the Commission's docket for review; and

The scope of the review is limited to whether the subpoenaed memorandum constitutes part of the decision making process of the Commission and whether disclosure of the document will inhibit the free expression of opinion within the Commission.

Complaint

IN THE MATTER OF
MISSOURI PORTLAND CEMENT COMPANY

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

Docket 8783. Complaint, June 10, 1969—Decision, March 12, 1973.

Consent order requiring a St. Louis, Missouri, producer of portland cement, among other things to divest itself of the stocks and assets of Botsford Ready Mix Company. The order further prohibits respondent from making any acquisitions not falling within certain Federal Trade Commission guidelines in the ready mix concrete or concrete products industry for a period of ten years without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. Sec. 18, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. DEFINITIONS

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

a. "Portland cement" includes Types I through V of portland cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

b. "Ready mixed concrete" includes all portland cement concrete which is manufactured and delivered to a purchaser in a plastic and unhardened state. Ready mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.

c. "Kansas City area" consists of the counties of Cass, Clay, Jackson and Platte, Missouri and the counties of Johnson and Wyandotte, Kansas.

II. MISSOURI PORTLAND CEMENT COMPANY

2. Missouri Portland Cement Company (hereinafter Missouri Portland), is a corporation organized and existing under the laws of the State of Missouri with its principal office located at 7751 Carondelet Avenue, St. Louis, Missouri.

3. Missouri Portland is principally engaged in the manufacture and sale of portland cement from plants in St. Louis, Missouri, Sugar Creek, (Kansas City), Missouri and Joppa, Illinois. In 1966, Missouri Portland had net sales of \$24,090,078, net earnings of \$3,649,243, and as of December 31, 1966, assets of \$54,863,110.

4. The Kansas City area is one of the principal markets for portland cement manufactured at Missouri Portland's Sugar Creek (Kansas City), Missouri plant. Missouri Portland has sold portland cement in the Kansas City area since approximately 1908. In 1965 Missouri Portland's Sugar Creek (Kansas City), Missouri plant shipped almost 2.2 million barrels of portland cement of which almost 1.1 million barrels were shipped to customers in the Kansas City area. Missouri Portland has been one of the two leading portland cement suppliers to the Kansas City area since at least 1961.

5. At all times relevant herein, Missouri Portland was engaged in selling and shipping portland cement in interstate commerce and is a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

III. BOTSFORD READY MIX COMPANY

6. Botsford Ready Mix Compay (hereinafter Botsford) was prior to February 15, 1965, a corporation organized and existing under the laws of the State of Missouri with its principal office located in Kansas City, Missouri.

7. Since 1956, Botsford has been engaged in the production and sale of ready mixed concrete in the Kansas City area and elsewhere in the United States and on February 15, 1965, was operating four ready mixed concrete plants in the Kansas City area. For the fiscal year ended June 30, 1965, Botsford had sales of \$3,283,074, net earnings of \$39,922, and as of November 30, 1964, total assets of \$1,056,790.81.

8. Botsford (including its subsidiary, Botsford Concrete Company, Inc., which was merged into Botsford on or about June 30, 1964) has been one of the leading producers of ready mixed concrete and consumers of portland cement in the Kansas City area since 1961 and in 1965 sold over 268,000 cubic yards of ready mixed concrete and consumed over 370,000 barrels of portland cement.

9. At all times relevant herein, Botsford was engaged in selling

and shipping ready mixed concrete and purchasing portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

IV. ACQUISITION

10. On February 15, 1965, Missouri Portland, through its wholly-owned subsidiary, Block Investment Corporation, purchased all of the issued and outstanding capital stock of Botsford for \$900,000.

V. NATURE OF TRADE AND COMMERCE

11. Portland cement is a material which in the presence of water binds aggregates, such as sand and gravel, into concrete. Portland cement is an essential ingredient in the manufacture of concrete and it represents about 60 percent of the material cost and over one-third of the total cost of manufacturing, distributing and selling ready mixed concrete, the only form in which concrete is sold as a commodity.

12. The portland cement industry in the United States is substantial. In 1966, there were about 50 portland cement companies in the United States operating approximately 184 plants. Total shipments of portland cement in that year amounted to approximately 390 million barrels, valued at about \$1.2 billion.

13. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, concrete product manufacturers, contractors and building material dealers. On a national basis, approximately 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete. However, in heavily populated metropolitan areas, the percentage of portland cement consumed by ready mixed concrete companies is generally higher. In general, portland cement consumers have not been integrated or affiliated with portland cement manufacturers. Each has operated independently on a vendor-vendee basis.

14. In recent years, there has been a significant trend of mergers and acquisitions by which ready mixed concrete companies in major metropolitan markets in various portions of the United States have become integrated with portland cement companies. Since 1959, there have been at least 40 such acquisitions.

15. Each vertical merger or acquisition which occurs in the portland cement industry potentially forecloses competing port-

land cement manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions—contributing both to the share of the market already foreclosed, and to the impetus for further such acquisitions.

16. In the Kansas City area the trend toward vertical integration is well advanced. Four of the leading ready mixed concrete sellers and portland cement consumers in this area have become integrated with portland cement companies since 1963 through acquisition. More than 40 percent of the market for portland cement in the Kansas City area has been potentially foreclosed by vertical integration.

VI. EFFECTS OF THE ACQUISITION

17. The effect of the acquisition of Botsford, both in itself and by aggravating the trend of vertical mergers and acquisitions, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of (1) portland cement and (2) ready mixed concrete in the United States as a whole and various parts thereof, including the Kansas City area, in the following ways, among others:

a. Missouri Portland's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Missouri Portland's non-integrated competitors effectively to compete in the sale of portland cement and ready mixed concrete has been and/or may be substantially impaired.

c. The entry of new portland cement and ready mixed concrete competitors may have been and/or may be inhibited or prevented.

d. The production and sale of ready mixed concrete, usually a decentralized, locally controlled, small business industry, has become concentrated in the hands of a relatively few manufacturers of portland cement.

VII. VIOLATION CHARGED

18. The acquisition by Missouri Portland of Botsford constitutes a violation of Section 7 of the Clayton Act, as amended.

DECISION AND ORDER

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

Respondent, by letter dated November 20, 1972, while this matter was pending on appeal from the initial decision of July 25, 1972, submitted an executed consent agreement; and

The Commission, by Order issued December 19, 1972, having withdrawn this matter from adjudication pursuant to Section 2.34(d) of its rules, with the understanding that, in the event the proposed consent agreement should finally be accepted and approved, then the initial decision in this matter be vacated and set aside; and

The executed agreement contains a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint which the Commission issued, 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 provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, and having determined on the basis of such comments that Paragraphs IV, V, VI and VII should be added, and respondent having agreed to such additions, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent, Missouri Portland Cement Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7751 Carondelet Avenue, St. Louis, Missouri.

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

Decision and Order

82 F.T.C.

ORDER

I

It is ordered, That respondent, Missouri Portland Cement Company, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within one (1) year from the date this order becomes final, divest, absolutely, subject to the approval of the Federal Trade Commission, all stock, assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and goodwill, acquired by respondent, as a result of the acquisition of the stock of Botsford Ready Mix Company, together with all additions and improvements thereto and replacements thereof of whatever description, so as to assure that there is established a separate and viable competitor engaged in the business of producing and selling ready mixed concrete. The five plants to be divested are those located at First and Broadway, 5600 East 500 Highway, and 86th and Wayne, in Jackson County, Missouri, and at Muncie and Lenexa in the State of Kansas.

II

It is further ordered, That pending divestiture, respondent shall not make or permit any deterioration or changes in any of the plants, machinery, equipment, buildings, or other property or assets to be divested which would impair their present capacity or market value.

III

It is further ordered, That none of the stock, assets, properties, rights or privileges required to be divested be transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, Missouri Portland Cement Company, or any of its subsidiaries or affiliates or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of voting stock of Missouri Portland Cement Company, or any of its subsidiaries or affiliates.

IV

It is further ordered, That with respect to the divestiture required herein, nothing in this order shall be deemed to pro-

hibit respondent from accepting consideration which is not entirely cash and from accepting and enforcing a loan, mortgage, deed of trust or other security interest for the purpose of securing to respondent full payment of the price, with interest, received by respondent in connection with such divestiture; *Provided, however*, That should respondent by enforcement of such security interest, or for any other reason, regain direct or indirect ownership or control of any of the divested plants, land or equipment, said ownership or control shall be redvested subject to the provisions of this order, within one year from the date of reacquisition.

V

It is further ordered, That either (a) for a period of two years from the date of divestiture of any ready mixed concrete plant or group of plants required by this order, or (b) for so long as respondent retains, directly or indirectly, a bona fide lien, mortgage, deed of trust, or other security interest in any of the property, plants, or equipment divested, whichever is longer, respondent may provide no more portland cement to that plant or group of plants than an amount, in tons, equal to thirty percent (30 percent) of the portland cement consumed by the plant or group of plants during the calendar year immediately preceding that in which divestiture is made, *Provided, however*, That if the purchaser elects, and the Commission approves, respondent may supply up to 75 percent of such consumption of portland cement.

VI

It is further ordered, That either (a) for a period of two years from the date of divestiture required by this order or (b) for so long as respondent retains, directly or indirectly, such a bona fide lien, mortgage, deed of trust, or other security interest in any of the property, plants, or equipment divested, whichever is longer, respondent shall not sell or deliver, directly or indirectly, ready mixed concrete in the Kansas City area as defined in the complaint, excluding Platte County, Missouri.

VII

It is further ordered, That respondent shall not install or operate any additional ready mixed concrete plant in the Kansas City area as defined in the complaint, excluding Platte County,

Missouri, for a period beginning with the date this order is accepted by the Federal Trade Commission and continuing until two years from the date of divestiture required by this order.

VIII

It is further ordered, That for a period of ten (10) years from the date this order becomes final respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital or other assets of any corporation engaged in the sale of ready mixed concrete or concrete products within respondent's present or future marketing area for portland cement or which purchased in excess of 10,000 barrels or 1,880 tons of portland cement in any of the five (5) years preceding the merger.

IX

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order, and every sixty (60) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the divestiture provisions of this order, and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with any person or persons interested in acquiring the stock, assets, properties, rights or privileges to be divested under this order, the identity of each such person or persons, and copies of all written communications to and from each such person or persons.

X

It is further ordered, That the initial decision dated July 25, 1972 be, and hereby is, vacated.*

Commissioner MacIntyre not participating.

*The initial decision is not reproduced herein, but copy thereof is available on request from Legal and Public Records, Federal Trade Commission, Washington, D.C.