IN THE MATTER OF

RSR CORPORATION

Docket 8959. Order, July 28, 1976

Order to show cause and order granting temporary *in camera* treatment.

Appearances

For the Commission: *K. Keith Thurman, James C. Egan* and *Annthalia Lingos.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross,* Washington, D. C. *Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee,* Dallas, Tex.

ORDER TO SHOW CAUSE AND ORDER GRANTING TEMPORARY *In Camera* TREATMENT

On July 22, 1976, respondent filed a document styled "Motion to Strike Pages 19 through 25 of 'Complaint Counsel's Reply Brief'." Respondent requested expedited treatment of its motion, alleging that the pages sought to be expunged contained information contained in *in camera* portions of the record in this proceeding.

The Commission has not as yet determined what disposition it will make of respondent's motion. However, pending a determination as to the alleged *in camera* status of the information contained in complaint counsel's brief it will order that this brief be maintained in the *in camera* portion of the docket of this case. The Commission notes, however, that *in camera* treatment should be granted sparingly. If respondent's allegation of *in camera* status is meant seriously as a separate claim from its motion to strike, respondent should specify within 15 days precisely those portions of pp. 19-25 which it believes should be maintained *in camera*, in the event that the motion to strike is not granted.

In addition, the Commission notes that the *in camera* findings of the administrative law judge filed in this matter contain information pertaining to market shares of RSR and Quemetco in 1971 and 1972 (I.D. 246-248, 256-258) and pertaining to the distances to which various plants of RSR and Quemetco shipped lead in those same years. (I.D. 217-218, 223) There is an obvious and substantial public interest in having decisions of the Commission contain, for public inspection and review, all information relevant to the Commission's determination. In light of this public interest, and in light of the fact that the information contained *in camera* is four to five years old, the Commission will order the parties within 15 days to show cause as to why the information

described below, to the extent that the Commission may determine it to be relevant, should not be made available to the public in the opinion of the Commission rendered in this matter. Therefore,

It is ordered, That the parties shall, within 15 days, file memoranda indicating for what reason, if any, the following categories of information may not be included in the opinion of the Commission in this matter and be made available to the public:

(1) *In camera* findings of the administrative law judge Nos. 246-248, 256-258 (whether or not CX 64 is placed on the public record).

(2) *In camera* findings of the administrative law judge 217-218, and 223, as well as other shipping distance figures derivable from CX 69-77, 79, including average plant shipping distance, percentage of plant production shipped to various States, and percentage of plant production shipped various distances.

It is further ordered, That pages 19-25 of complaint counsel's Reply Brief in this matter shall be maintained in the *in camera* portion of the record, pending Commission resolution of respondent's "Motion to Strike."

IN THE MATTER OF

HORIZON CORPORATION

Docket 9017. Order, July 28, 1976

Denial of respondent's motion to quash subpoenas duces tecum.

Appearances

For the Commission: *Eugene Kaplan, Lemuel W. Dowdy, John M. Tifford* and *Paul L. Chassy.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines,* Washington, D. C. *J. Michael Brennan* and *Samuel Pruitt, Jr., Gibson, Dunn & Crutcher,* Los Angeles, Calif.

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM

The administrative law judge ("ALJ") has certified to the Commission respondent's motion to quash subpoenas duces tecum issued to Aetna Business Credit, Inc., and FNB Financial Co.,[1] both of which, according to the motion, are respondent's creditors.[2] The subpoenas were issued by the Assistant Director of Marketing Practices, Bureau of Consumer Protection, in connection with an investigation of Unnamed Promoters and Sellers of Interests in Subdivided Land, File No. 742 3193 under Part II of the Rules of Practice.

Respondent asserts that the subpoenas seek information directly related only to matters involved in the instant adjudicatory proceeding, and that, accordingly, application for the subpoenas should have been made to the ALJ under Section 3.34. Respondent further argues that complaint counsel are attempting to circumvent the Commission's ruling in *Electronic Computer Programming Institute, Inc.*, 3 CCH Trade Reg. Rep. ¶21,039 (November 11, 1975) [86 F.T.C. 109], that the law judges should not permit the discovery or introduction of evidence relevant only to Section 19 of the F.T.C. Act[3] and the ALJ'S statements to complaint counsel during a May 3, 1976, prehearing conference that any additional subpoenas against respondent would have to be "very specific and very limited and you are going to have to demonstrate relevancy beyond any doubt. My advice is to wait until you get full

[1] An investigational subpoena has also issued to Ford Motor Credit Company. See Opposition and Answer by Complaint Counsel to Respondent's Motion to Quash Subpoenas Duces Tecum Issued to Respondent's Creditors and to Enjoin Complaint Counsel from Obtaining Documents Pursuant to these Subpoenas and Other Relief at 2. According to complaint counsel none of the subpoenaed companies has moved to quash or modify its subpoena. *Id.* at 9.

[2] The ALJ denied respondent's motion to enjoin complaint counsel from seeking or accepting documents or testimony from Aetna, FNB, or others through any Commission process other than that authorized by the Part III rules.

[3] Section 19 authorizes the Commission to bring consumer redress actions in State and Federal courts.

compliance [with the subpoenas already issued] and give me one more subpoena."

Complaint counsel respond that the purpose of the aforesaid subpoenas is to determine whether any of respondent's lenders have themselves violated Section 5 and not to obtain "backdoor discovery" against Horizon. Complaint counsel note that respondent has tentatively offered to supply complaint counsel with information bearing on Section 19 relief.

The Commission "* * * may conduct such investigations as it deems necessary even though such investigations may cover ground which is already the subject of an adjudicative proceeding." *FTC* v. *Waltham Watch Co.*, 169 F. Supp. 614, 620 (S.D.N.Y. 1959). Of course, investigational subpoenas should not be used to circumvent safeguards designed to ensure fair and expeditious trials. We have already held that it is not in the public interest to delay Part III proceedings by the discovery and reception of evidence relevant only to Section 19 issues. *Electronic Computer Programming Institute, supra.* However, the ALJ has the means of preventing the introduction of irrelevant evidence, or evidence obtained in violation of any orders he issues relating to the timing and scope of discovery.[4]

No showing having been made that the investigational subpoenas will deprive respondent of a prompt and fair trial[5] the Commission has determined to deny the aforesaid motion to quash.

It is so ordered.

---

[4] We do not mean to suggest that relevant evidence which happens to be obtained pursuant to the investigational subpoenas will necessarily be inadmissible. See Rules of Practice, Section 3.43(c).

[5] We disagree with complaint counsel that respondent lacks standing to move to quash the instant subpoenas. While a party may not ask for an order to protect the rights of another party or a witness if that party or witness does not claim protection for himself, see Commercial Laundry v. Linen Supply Assn., 90 F. Supp. 470 (S.D.N.Y. 1950); 8 C. Wright & A. Miller, *Federal Practice and Procedure* §2035 at 261 (1970), he may seek an order if he believes his own interest is jeopardized. *Id.* Respondent, as the subject of an adjudicative proceeding, was entitled to raise its claim that the investigational subpoenas would jeopardize its procedural rights.

IN THE MATTER OF

CROWN CENTRAL PETROLEUM CORPORATION

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

Docket 8851. Complaint, July 14, 1971 — Modifying order, Aug. 3, 1976

Order modifying an earlier order dated Nov. 26, 1974, 40 F.R. 12775, 84 F.T.C. 1493, by entering the modifying words "performance" before the words "quality" and "characteristic" in order provision 7(d) of the order.

Appearances

For the Commission: *Fauster J. Vittone* and *Jean F. Greene.*

For the respondent: *James H. Kelley* and *Leonard A. Tokus, Bergson, Borkland, Margolis & Adler*, Washington, D.C. and *Morton H. Sacks, Cable, McDaniel, Bowie & Bond*, Baltimore, Md.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and that Court having issued, on March 4, 1976, its order affirming the Commission's order to cease and desist entered November 26, 1974 [84 F.T.C. 1493], with the insertion of modifying words in one provision thereof:

It is ordered, That the Commission's order issued in this matter on November 26, 1974, be modified in accordance with the decision and judgment of the Court so as to read in full as follows:

> *It is ordered*, That respondent Crown Central Petroleum Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of Crown gasolines, or the additive CA-101, or any other product 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 such product:
>
> (a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or
>
> (b) Will eliminate or reduce air pollution caused by motor vehicles; or

(c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

or that:

(d) Any gasoline or gasoline additive product has any other performance quality, performance ability or performance characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations;

unless and only to the extent that each and every such representation is true and has been fully and completely substantiated by competent scientific tests. The results of said tests, the original data collected in the course thereof and a detailed description of how said tests were performed shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that any such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product.

3. Representing directly or by implication that any product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

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

It is further ordered, That respondent shall, within sixty (60) days after service of the order upon it, file with the Commission a written report, signed by the respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

IN THE MATTER OF

WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.

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

Docket C-2638. Complaint, Feb. 13, 1975 — Modifying order, Aug. 3, 1976

Order modifying an earlier order dated Feb. 13, 1975, 40 F.R. 15872, 85 F.T.C. 237, adds to Paragraph 12(2)(c) of the order the provision that if money required to be deposited in the Escrow Funds cannot be distributed, respondent must make direct pro rata payments to eligible students within 60 days.

Appearances

For the Commission: *Walter E. Diercks* and *Lawrence M. Hodapp.*

For the respondents: *Charles Edward Fairfax, III, Cahill, Gordon & Reindel,* New York City.

ORDER MODIFYING ORDER TO CEASE AND DESIST AND ORDER DISCONTINUING STAY

On May 18, 1976 [87 F.T.C.1288], the Commission issued an order to show cause why the Commission's order to cease and desist, issued February 13, 1975 [85 F.T.C. 237], in this proceeding, should not be altered and modified by language specified in the order. The modification was proposed to make clear that respondent General Educational Services Corporation's obligation to pay restitution would not be affected by the removal of monies from the escrow account which will be funded by certain students of respondent Weaver Airline Personnel School, Inc. Respondents, in their answer to the order to show cause, indicate that they and Commission's staff have negotiated a modification that differs from the modification proposed in the order to show cause by providing that respondent General Educational Services Corporation "shall make direct pro rata payments to" eligible Weaver students "if any of the sums required to be deposited into the Escrow Funds have been removed or cannot be distributed." The modification proposed in the order to show cause was not so specific, providing that General Educational Services Corporation "shall assure * * * that the total sums required be deposited into the Escrow Fund for restitution are paid." We agree that the modification recommended by respondents is preferable, and we will order that the Commission's order to cease and desist be modified by the language recommended in respondents' answer to the order to show cause.

Accordingly, *it is ordered,* That the following language be added to Paragraph 12(2)(c) of the order:

Provided, however, That if, other than with the express written consent of the Federal Trade Commission, any of the sums required to be deposited in the Escrow Funds have been removed or cannot be distributed, then within sixty (60) days after the final date established for submission of student requests for restitution under this Paragraph, respondent General Educational Services Corporation shall make direct pro rata payments to the eligible Weaver students described in this Paragraph in the same amounts that each such eligible student would have received had such payments been made from the Escrow Funds, but the total amount so paid shall not exceed the total amount required to be deposited in the Escrow Funds.

* * * * * * *

The Commission further ordered on May 18, 1976, the reopening of this proceeding so as to stay and suspend enforcement of compliance with the notification provision of Paragraph 12 of the order of February 13, 1975. Because the obligation of General Educational Services Corporation has now been clarified, the stay and suspension of compliance is no longer necessary and compliance will be required.

Accordingly, *it is ordered*, that the stay and suspension of compliance with Paragraph 12 of the order of February 13, 1975 be, and it hereby is, discontinued.

IN THE MATTER OF

MAICO HEARING INSTRUMENTS, INC.

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

Docket 8927. Amended Complaint, April 30, 1976 — Decision, Aug. 4, 1976

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids, among other things to cease imposing on its dealers customer and territorial restrictions and exclusive dealing requirements. The order also requires the firm, under certain circumstances, to make its products available to all qualified dealers, and to maintain, for a ten-year period, a file record of any refusal to sell.

Appearances

For the Commission: *Alan I. Leibowitz, L. Barry Costilo, James C. Donoghue* and *Dennis R. Carluzzo.*

For the respondent: *Thomas C. Kayser, Robins, Davis & Lyons,* Minneapolis, Minn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Maico Hearing Instruments, Inc. (hereinafter sometimes "Maico") is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business at 7375 Bush Lake Road, Minneapolis, Minnesota.

PAR. 2. Maico is engaged in the business of manufacturing, distributing, selling and repairing of Maico brand hearing aids. It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of its business respondent ships or causes to be shipped hearing aids from Maico facilities in the State of Minnesota to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondent's hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondent's selected retail dealers in the course and conduct of their business of offering for sale and selling Maico hearing aids are in substantial competition in commerce with one another and with dealers engaged in the offering for sale and selling of other brands of hearing aids; and respondent is in substantial competition in commerce with others engaged in the manufacturing, distributing, selling and repairing of hearing aids.

PAR. 5. Trade and commerce in the United States in hearing aids is substantial. In 1970, the total value of shipments amounted to approximately $50 million at the manufacturers' prices, and is estimated to have exceeded $175 million at retail prices. In 1970, about fifty domestic manufacturers, domestic subsidiaries of foreign manufacturers and domestic distributors of foreign manufacturers sold approximately 510,000 hearing aids through 5,000 retail dealers who employed over 10,000 salesmen.

PAR. 6. In 1970, the top four companies in the hearing aid industry, including Maico, accounted for approximately 50 percent of the dollar value of shipments; the top eight companies accounted for approximately 70 percent of such shipments; and the top twenty companies accounted for over 90 percent of the industry's shipments.

PAR. 7. In 1970, Maico, which has manufactured hearing aids since 1939, was the fourth largest manufacturer of hearing aids in the United States with sales in excess of $3 million, representing more than 6 percent of the market.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process.

Approximately 60 percent of the retail sales of hearing aids occur as a result of an initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model, rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about $100, the average retail price to the hearing handicapped is about $350. More than 50

percent of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

PAR. 9. In the distribution and sale of their hearing aids, a number of the manufacturers of hearing aids for many years have used and pursued parallel courses of business behavior.

Among such courses of business behavior are the following:

(1) distributing and selling their hearing aids directly to selected retail dealers, refusing to deal with all other dealers;

(2) entering into agreements or understandings with their dealers, which agreements:

(a) establish territories within which the dealers may advertise and sell their products;

(b) require exclusive dealing in the manufacturers' products;

(c) assign sale or purchase quotas to be met by their dealers;

(d) encourage or require the use of the manufacturers' brand name in the dealers' trade style;

(e) restrict the classes of customers with whom their dealers may deal;

(f) require their dealers to submit the names and addresses of their customers to the manufacturers;

(g) permit the manufacturers to terminate such agreements without cause upon thirty days notice; and

(h) in the event of such termination permit the manufacturers to repurchase the terminated dealers' products purchased from such manufacturers;

(3) refusing to issue the express product warranty to consumers unless and until their dealers have reported the names and addresses of their customers to the manufacturers;

(4) encouraging or requiring their dealers to participate in cooperative advertising programs which preclude mention that the dealers offer competing brands of hearing aids for sale;

(5) engaging in extensive national brand advertising of their hearing aids;

(6) suggesting to their dealers retail prices for hearing aids which are often more than 300 percent above the manufacturers' prices to the dealers, with dealers generally selling at such suggested retail prices;

(7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including

independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

The effect of the aforesaid parallel courses of business behavior has been to eliminate intra-brand and to hinder or suppress inter-brand competition in the hearing aid industry, and, further, to aggravate the unfair and anticompetitive effect of the acts and practices of the respondent as alleged in Paragraphs Ten and Eleven.

PAR. 10. In the course and conduct of its business of manufacturing, distributing, selling and repairing its hearing aids in commerce, Maico pursues the following course of action:

A. It requires its selected dealers to sell Maico hearing aids within assigned geographic territories;

B. It requires its selected dealers to deal exclusively in Maico hearing aids;

C. It fixes, establishes, controls and maintains the retail prices at which its selected dealers sell or repair Maico hearing aids;

D. It prohibits its dealers from dealing with certain potential customers;

E. It prevents others, not its dealers, from dealing in, or repairing Maico hearing aids;

F. It appropriates and uses for its own purposes the names and addresses of its dealers' customers.

PAR. 11. In furtherance of this course of action, respondent has been and now is engaged alone or with its dealers in the following acts and practices, among others:

(1) Respondent uses agreements or understandings which

(a) require a dealer to sell Maico hearing aids within an assigned territory;

(b) require a dealer to achieve a sales quota fixed from time to time by Maico;

(c) prohibit a dealer from soliciting, selling, repairing or making delivery of any of Maico hearing aids outside the assigned territory;

(d) require a dealer to submit to Maico the name and address of each customer who purchases Maico hearing aids;

(e) provide that Maico has the right to terminate the contract for failure to make quotas at any time, or for violations of the terms thereof, upon thirty days written notice to the dealer;

(2) Respondent refuses to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial

exclusivity so that he is not in competition with any other dealer selling Maico hearing aids;

(3) Respondent requires its dealers to surrender to it all inquiries which are received from prospective purchasers residing outside of such dealers' assigned territories;

(4) Respondent refuses to issue Maico's express product warranty unless and until the dealer from whom the hearing aid was purchased forwards the retail purchaser's name and address to Maico;

(5) Respondent permits or requires its dealers to use the Maico brand name, in conjunction with a geographic identification of the dealers' locations, or otherwise, in the dealers' trade styles;

(6) Respondent supplies its dealers only with names of prospective customers arising in such dealers' assigned territories;

(7) Respondent offers to its dealers a cooperative advertising plan which provides that Maico will not share the cost of any dealer advertisement outside of his assigned territory, or which mentions in any way that the dealer also offers for sale other brands of hearing aids;

(8) Respondent issues to its dealers price lists or provides other means by which the retail prices for Maico products are set forth;

(9) Respondent requires its dealers to adhere to repair prices recommended by Maico, which prices are also made available to users of hearing aids;

(10) Respondent refuses to sell Maico repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

(11) Respondent refuses to supply Maico promotional and advertising materials, price lists, hearing aid specifications or performance information to all dealers;

(12) Respondent prohibits its selected dealers from selling Maico hearing aids to other dealers of hearing aids;

(13) Respondent provides in its standard-form contract that Maico has the right to terminate the contract, at any time, upon thirty days notice to the dealer;

(14) Respondent provides in said contract that in the event of termination:

(a) a dealer is required to return to the respondent the names and addresses of Maico hearing aid users;
(b) Maico has the right to repurchase the terminated dealer's inventory of Maico products.

PAR. 12. The acts and practices of respondent enumerated hereinabove in Paragraphs Ten and Eleven, taken either individually or collectively, are oppressive, coercive, unfair and anticompetitive and have the tendency and capacity of hindering, suppressing or eliminating competition, or constitute unfair methods of competition, or unfair acts or practices with the following effects, among others:

(1) Competition between respondent and other manufacturers of hearing aids has been hindered and suppressed;

(2) Competition among dealers dealing in Maico hearing aids has been eliminated;

(3) Such dealers have sold or repaired Maico hearing aids at prices established by respondent;

(4) Such dealers have been deprived of their freedom to select their customers and otherwise to function as free and independent businessmen;

(5) Such dealers have been deprived of their ownership of, and freedom to maintain, confidential lists of their customers;

(6) Competition among dealers dealing in Maico hearing aids and dealers dealing in other brands of hearing aids has been hindered and suppressed;

(7) Retail dealers of hearing aids have been deprived of their freedom to act in the best interests of the hearing-impaired public;

(8) Consumers have been deprived of their right to fair and impartial recommendations from dealers in the selection of hearing aids for the alleviation of their hearing impairment;

(9) Consumers have been deprived of the benefits of free competition;

(10) Those engaged in the repairing or servicing of hearing aids in

competition with respondent have been deprived of their right to repair or service Maico hearing aids.

PAR. 13. The aforesaid acts and practices of respondent have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual or potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Maico Hearing Instruments, Inc. with violating the Federal Trade Commission Act; and

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

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

1. Respondent Maico Hearing Instruments, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 7375 Bush Lake Road, Minneapolis, Minnesota.

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 and its subsidiaries, divisions, affiliates, successors, assigns, officers, directors agents, representatives and employees, directly or indirectly, or through any corporate or other

device in connection with the manufacturing, distribution, advertising, offering for sale, sale or repair of its own brand name or trademark hearing aids, or hearing aid accessories, in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving, or enforcing, by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, request, or in any other manner, any arrangement or method of doing business with a dealer of hearing aids and/or accessories which has the purpose or effect of precluding or preventing a dealer from selling the product of one or more other hearing aid manufacturers.

2. Refusing to make available promptly upon request:

(a) Respondent's hearing aids, respondent's hearing aid accessories which respondent sells or any of respondent's written materials relating to fitting and selling such hearing aids or accessories, to any dealer engaged in the sale of hearing aids; or

(b) repair or replacement parts for respondent's hearing aids or any of respondent's written materials relating to repairing or replacing such hearing aids, to any person engaged in the repair of hearing aids, when requested for such purpose, if respondent makes repair or replacement parts available to any dealer for such purpose; *provided, however*, that respondent may impose a ten dollar ($10.00) minimum order requirement for such parts;

(c) repair service on a nondiscriminatory basis with respect to a hearing aid manufactured by respondent when requested by any dealer who sold such aid;

provided, however, that if no other provision of this order is violated thereby:

(i) Respondent may require as a condition to the availability from it of any of its products, services or materials, that the dealer or person referred to in 2(a), (b) and (c) above has received instruction or met standards necessary for the fitting, servicing, and/or repairing of respondent's hearing aids which are required at that time of all then existing dealers of respondent's products or all persons then engaged at the request of respondent in the repair of respondent's products, so long as such instruction, if made available to any dealer or person, is made available by respondent on reasonable terms and conditions to all dealers or persons wanting to deal in or repair respondent's products;

(ii) Respondent may refuse to make available directly from it any of its products or materials to any dealer or person if such requesting dealer or person is able promptly to obtain the product or materials

from another dealer or distributor at respondent's price to such dealer for a single unit (meaning the same price and discount terms available from respondent) plus a reasonable service charge not to exceed the sum of twenty five dollars ($25.00), said sum to be adjusted annually by any increase or decrease after 1974 in the Consumer Price Index as published by the United States Government;

(iii) Respondent may refuse to make available directly from it any of its products, services or materials to any dealer or person on other grounds related to that dealer's or person's professional competence or ethical conduct, so long as such refusals are uniformly made where such grounds exist;

(iv) Respondent may refuse to make available directly from it any of its products or materials to any dealer or person if such requesting dealer or person will not agree to purchase a minimum initial order of five (5) of respondent's hearing aids on a cash with order basis.

3. Entering into, maintaining, preserving or enforcing by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, request, report of sale, warranty limitation, use of names or addresses of a dealer's customers, or in any other manner, any arrangement or method of doing business which has the purpose or effect of restricting or limiting:

(a) the territory or area in which a dealer of respondent's hearing aids advertises, offers for sale, sells or repairs such products, or

(b) the person or persons with whom a dealer of respondent's hearing aids deals.

4. Failing to return any hearing aid submitted to respondent for repair directly to the dealer who submitted such product for repair unless otherwise instructed in writing by such dealer.

5. Fixing, establishing, stabilizing, maintaining or suggesting the prices at which a dealer of respondent's hearing aids may or shall advertise, offer for sale, or sell to the public, or a person repairing respondent's hearing aid may repair such products; *provided, however,* that nothing in this order shall prohibit respondent after ten years from the date of entry of this order from exercising any lawful rights it may then have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952) with respect to hearing aids, accessories or parts.

6. Requiring that a dealer participating in respondent's cooperative advertising program must not state or imply, in such cooperative advertisements, that the dealer also deals in other brands of hearing aids; *provided, however,* that respondent may continue to prohibit in

such cooperative advertisement the stating of other brand names of hearing aids.

7. Requiring or coercing a dealer of respondent's hearing aids to submit to respondent the names or addresses of any customers of such dealer, or, with respect to such customer names or addresses obtained from a dealer after the effective date of this order, maintaining, using, publishing or disseminating them for any purpose, without securing the free and informed written consent of the dealer for each such purpose based upon full disclosure to the dealer of the specific uses and disseminations which would be made of the customer names. No such consent shall be sought for other than respondent's advertising and promotional programs for at least one hundred twenty (120) days from the date of respondent's initial shipment of hearing aids to a new dealer or, in the case of an existing dealer, at least sixty (60) days after service on the dealer of this order and letter attached hereto as Appendix A.

8. Preventing any dealer from using respondent's product (brand) name in connection with the advertising, offering for sale, sale or repair of any of respondent's products, except that respondent may protect its rights in such name recognized at law.

9. Failing to include and deliver with any of respondent's hearing aids sold by respondent any express product warranty for such product provided by respondent to the user.

II

It is further ordered, That respondent shall:

(a) Forthwith distribute a copy of this order to each of its operating units, to its present corporate officers and to its present sales and repair personnel, and shall secure from each such officer, employee or other person, a signed statement acknowledging receipt of said order;

(b) Within thirty (30) days after service upon it of this order, distribute a copy of the letter attached to this order and made a part hereof as Appendix A to each of its existing hearing aid dealers and to every person known to it to be engaged in the repair of respondent's products;

(c) Within sixty (60) days after service upon it of this order, place a full-page advertisement in a trade journal or publication with circulation among hearing aid dealers, which advertisement shall clearly and conspicuously disclose the provisions of Part I of this order;

(d) Within one hundred and twenty (120) 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, including a list of all dealers and other persons on whom it has served a

copy of Appendix A, and a copy of the publication which includes respondent's advertisement required by this order;

(e) For a period of ten (10) years from the date hereof establish and maintain a file of all records referring or relating to respondent's refusal to sell to any hearing aid dealer, or person engaged in the business of repairing hearing aids, which file must contain a record of a communication to such dealers or persons explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and annually, for a period of five (5) years from the date hereof, submit a report to the Commission listing the names of all dealers or persons with whom respondent has refused to deal over the preceding year, a description of the reason for the refusal, and the date of the refusal;

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

APPENDIX A

Dear

The Federal Trade Commission has entered a consent order affecting the hearing aid and accessory operations of Maico Hearing Instruments, Inc. which obligates it not to impose various restrictions upon dealers or to engage in certain other practices. The order is for settlement purposes only and does not constitute an admission that the law has been violated as alleged by the Commission. A copy of the pertinent provisions of the order is enclosed for your careful examination. If in the future you believe that any of its terms have been violated, the details may be reported in writing to:

Federal Trade Commission

Bureau of Competition

Washington, D.C. 20580

We welcome the opportunity to do business with you on terms which are in accordance with the letter and the spirit of the Federal Trade Commission order.

Yours very truly,

President, Maico Hearing Instruments, Inc.

IN THE MATTER OF

ANDREX INDUSTRIES CORPORATION, ET AL.

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

Docket C-2831. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976

Consent order requiring a New York City manufacturer and seller of fabrics, among other things to cease misbranding and mislabeling wool products; misrepresenting the wool and other fiber content of their fabrics and further requires respondents to notify their customers that the fabrics they purchased were misbranded. The order further prohibits respondents from using the term "Angorama" in connection with products not substantially composed of "angora" fibers.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Hahn, Hessen, Margolis & Ryan,* New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Andrex Industries Corp., a corporation, and Stephen Gottdiener, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Andrex Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1430 Broadway, New York, New York.

Respondent Stephen Gottdiener is an officer of Andrex Industries Corp. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents are engaged in the business of manufacturing and selling fabrics including but not limited to wool products.

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

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

Among such misbranded wool products, but not limited thereto, were certain fabrics represented to contain wool and stamped, tagged, labeled, or otherwise identified by respondents as 70% polyester, 15% acrylic and 15% angora wool; whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respect:

Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of respondents as set forth above

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

PAR. 7. Respondents are now and for some time past have been engaged in the manufacture, offering for sale, sale, and distribution of certain products, namely fabrics. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their mill in the State of North Carolina to purchasers located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 8. Respondents in the course and conduct of their business have disseminated to prospective purchasers samples of wool products used to promote or effect sales of such wool products affixed to sample cards. The trademark, "Angorama," was conspicuously printed upon said sample cards representing, directly or indirectly, that said products contained angora wool whereas, in truth and in fact, said products did not contain angora wool but contained substantially different fibers.

PAR. 9. Respondents in the course and conduct of their business as aforesaid have made statements on their sample cards and invoices setting forth the fiber content of certain of their products as 70% polyester, 15% acrylic, 15% angora wool whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 10. The acts and practices set forth in Paragraphs Eight and Nine have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged in Paragraphs Eight and Nine were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce, within the intent and meaning of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939; and

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

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

1. Respondent Andrex Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1430 Broadway, New York, New York.

Respondent Stephen Gottdiener is an officer of said corporation. 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 respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Andrex Industries Corp., a corporation, its successors and assigns, and its officers, and Stephen Gottdiener, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as

"commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products.

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

3. Failing to securely affix labels to samples, swatches or specimens of wool products, used to promote or effect the sale of such wool products, showing in words and figures plainly legible all the information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Andrex Industries Corp., a corporation, its successors and assigns, and its officers, and Stephen Gottdiener, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, or other device in connection with manufacturing, advertising, offering for sale, sale or distribution of fabrics in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Using the word "Angorama" or any word of similar import on sample cards or in any other manner in connection with any product that is not composed substantially of fibers entitled to be designated as "angora." *Provided, however*, that this order shall not be construed as prohibiting use of the word "Angorama" in connection with a product composed in substantial part of fibers entitled to be designated "angora" if such word is accompanied by a clear and conspicuous statement of the percentage by weight of the fibers contained therein.

2. Misrepresenting the amount or character of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

It is further ordered, unless heretofore complied with, That respondents notify each of their customers that purchased the wool products which gave rise to this complaint of the fact that United States government tests have shown that such products were misbranded.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of each change in business or

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

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

It is further ordered, That 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

SUNSHINE ORIGINALS OF MIAMI, INC., ET AL.

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

Docket C-2832. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976

Consent order requiring a Hialeah, Fla., garment manufacturer among other things to cease misbranding and falsely guaranteeing textile fiber products; failing to disclose legally required information concerning such products; and misrepresenting domestic and foreign branch offices.

Appearances

For the Commission: *Truett M. Honeycutt.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sunshine Originals of Miami, Inc., a corporation, also doing business as Don Manuel of Miami, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of Sunshine Originals of Miami, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sunshine Originals of Miami, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The respondent corporation maintains its office and principal place of business at 600 W. 18th St., Hialeah, Florida.

Respondents Manuel Ramos and Manuel A. Ramos, Jr., are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address is the same as that of the corporate respondent.

Respondents are engaged in the business of manufacturing garments including particularly men's sport shirts and women's blouses, substantial quantities of which are known in the trade as "irregulars," or "seconds."

COUNT I

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

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act. Among such misbranded textile fiber products, but not limited thereto, were men's sport shirts offered by Sunshine Originals of Miami, Inc., which did not have labels affixed thereto disclosing:

(1) The generic names of the fibers present in the order of predominance by weight;

(2) The percentage of the fibers present by weight; and

(3) The name or other identification, issued and registered by the Commission, of the manufacturer of the products or one or more persons subject to Section 3 with respect to such products.

PAR. 4. Respondents have furnished their customers false guaranties that textile fiber products were not misbranded or falsely invoiced by falsely representing in writing on invoices that they have filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission in violation of Rule 38(d) of the rules and regulations under said Act and Section 10(b) of such Act.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification

Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act, as amended.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraph One, hereof, are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 6. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products to be shipped from their place of business in the State of Florida to purchasers thereof located in various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 8. Respondents falsely and deceptively represented, directly or by implication, on textile fiber product labels that they maintain branch offices or other facilities in Rome, Italy; Madrid, Spain; and New York, New York; whereas, in truth and in fact, respondents do not maintain such facilities.

PAR. 9. Respondents falsely and deceptively represented on invoices that they had on file with the Federal Trade Commission a continuing guaranty under the Wool Products Labeling Act of 1939, when, in truth and in fact, respondents did not have such a continuing guaranty on file at the time of the representation.

PAR. 10. Respondents falsely and deceptively represented on invoices that they had on file with the Federal Trade Commission a continuing guaranty under the Flammable Fabrics Act, as amended, when, in truth and in fact, respondents did not have such a continuing guaranty.

PAR. 11. Respondents did not, in each applicable instance, mark their said men's sport shirts and women's blouses in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public, in the absence of markings showing that men's sport shirts and women's blouses are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said

products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that such statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Six through Twelve, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in or affecting commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing the consent order, with 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, as amended, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Sunshine Originals of Miami, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 600 W. 18th St., Hialeah, Florida. Sunshine Originals of Miami, Inc. does business under its own name and as Don Manuel of Miami.

Respondents Manuel Ramos and Manuel A. Ramos, Jr. are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

COUNT I

It is ordered that respondents Sunshine Originals of Miami, Inc., a corporation, doing business under its own name and as Don Manuel of Miami, its successors and assigns, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in or affecting commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in any other textile fiber product, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:

a. Falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to name or the amount of constituent fibers contained therein;

b. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner, each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;

2. Furnishing a false guarantee that any textile fiber product is not misbranded or falsely or deceptively invoiced or advertised under the provisions of the Textile Fiber Products Identification Act.

COUNT II

It is further ordered, That respondents Sunshine Originals of Miami, Inc., a corporation, doing business under its own name and as Don Manuel of Miami, its successors and assigns, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of shirts, blouses or any other articles of merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Falsely and deceptively representing, directly or by implication on textile fiber product labels or other instrumentalities, that respondents maintain branch offices or other facilities in Rome, Madrid, New York, or any other city or geographic area;
2. Falsely representing in writing that respondents have a continuing guaranty on file with the Federal Trade Commission under the provisions of the Wool Products Labeling Act of 1939;
3. Falsely representing in writing that respondents have a continuing guaranty on file with the Federal Trade Commission under the provisions of the Flammable Fabrics Act, as amended.

It is further ordered, That respondents Sunshine Originals of Miami, Inc., a corporation, doing business under its own name and as Don Manuel of Miami, its successors and assigns, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of shirts, blouses or other related textile or wool products which are "irregulars," "seconds," or otherwise imperfect, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Selling or distributing any such product without clearly and conspicuously marking thereon the word "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public;

2. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be;

3. Representing in any other manner, directly or by implication, that such products are first-quality or perfect quality.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Sunshine Originals of Miami, Inc., 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 of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged, as well as a description of their duties and responsibilities.

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

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

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

IN THE MATTER OF

THE HERTZ CORPORATION

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

Docket C-2833. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976

Consent order requiring a New York City dealer in used motor vehicles, among other things to cease misrepresenting and/or failing to disclose material facts relating to the history of used motor vehicles offered for sale by respondent. Further, respondent is required to keep accurate repair records, and to advise prospective customers of their right to inspect these records; and, additionally, a statement as to the availability of repair records for inspection must be conspicuously disclosed on sales contracts and receipts.

Appearances

For the Commission: *Michael Dershowitz* and *Frank H. Addonizio.*

For the respondent: *Jerrold G. Van Cise, Cahill, Gordon & Reindel,* New York City.

COMPLAINT

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

PARAGRAPH 1. Respondent The Hertz Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 660 Madison Ave., New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, and sale to the public of used motor vehicles and in the servicing and repair thereof.

PAR. 3. In the course and conduct of its aforesaid business, respondent causes, and for some time last past has caused, its used motor vehicles to be shipped from respondent's various rental fleet locations to its retail outlet locations in various States of the United States and the District of Columbia.

Accordingly, the respondent maintains and has maintained a substantial course and conduct of business in or affecting commerce as

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

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its used motor vehicles, the respondent has made numerous statements and representations in advertisements inserted in newspapers of interstate circulation.

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

HERTZ NOT-SO-USED CARS

* * * * * * *

Professionally maintained cars

* * * * * * *

Hertz reputation of Number 1 quality

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondent has represented, directly or by implication, that:

The used motor vehicles described or referred to in respondent's advertisements were of superior quality.

PAR. 6. In truth and in fact, the used motor vehicles described or referred to in respondent's advertisements, in many instances, were not of superior quality. In fact, many had sustained varying degrees of damage.

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

PAR. 7. In the further course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its used motor vehicles, the respondent and its employees, salesmen, or representatives at some retail outlets had failed to disclose to prospective purchasers in either respondent's advertisements or oral solicitations, prior to the consummation of sale, that respondent's used motor vehicles, in many instances, had sustained varying degrees of damage. Respondent's failure to disclose such material facts, prior to the consummation of sale was unfair, false, misleading and deceptive.

PAR. 8. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts, as aforesaid, has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations

were true and complete and into the purchase of respondent's used motor vehicles by reason of said erroneous and mistaken belief.

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as those sold by the respondent.

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

DECISION AND ORDER

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

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

1. Respondent The Hertz Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Delaware, with its office and principal place of business located at 660 Madison Ave., New York, New York.

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

ORDER

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

(a) The term "used motor vehicle" refers to any used motor vehicle offered for sale to the public by respondent.

(b) The term "major damage" refers to that degree of damage sustained by a used motor vehicle which may adversely affect either the vehicle's safety or performance, whether or not such damage has been repaired.

(c) The term "repair records" refers to any and all written statements in regard to the repair of any damage sustained by a used motor vehicle.

It is ordered, That respondent The Hertz Corporation, a corporation, its successors and assigns and its officers, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and repair of used motor vehicles, or any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or indirectly, orally or in writing, that used motor vehicles are not-so-used or describing them by any other such term or terms of similar import and meaning or misrepresenting in any manner the condition of any used motor vehicle.

2. Failing to disclose clearly and conspicuously, in any advertisement for the sale of each specifically identified used motor vehicle:

(a) the prior use of each such used motor vehicle (*e.g.* rental);

(b) the extent of such use (*e.g.* mileage); and

(c) any major damage sustained by such used motor vehicle and known to respondent.

3. Failing to maintain repair records or true copies thereof, for each used motor vehicle at the retail outlet where such used motor vehicle is offered for sale.

4. Failing to disclose in all oral solicitations for the sale of used

motor vehicles that the repair records for each such used motor vehicle will be furnished to prospective purchasers for perusal upon their request prior to the consummation of sale of such used motor vehicle.

5. Failing to furnish any prospective purchaser of used motor vehicles with the repair records for any such used motor vehicle subsequent to the purchaser's request to peruse such records prior to the consummation of sale of such used motor vehicle.

6. Failing to furnish all purchasers of used motor vehicles with a copy of any contract or receipt pertaining to the sale of such used motor vehicle which contains or has superimposed in immediate proximity to the space reserved in the contract for the signature of the purchaser or on the front page of any receipt if a contract is not used and in bold-faced type of a minimum size of 10 points, a clear and conspicuous statement in the following form:

YOU, THE PURCHASER, MAY INSPECT,

PRIOR TO PURCHASE, THE REPAIR

RECORDS OF THIS OR ANY OTHER USED

MOTOR VEHICLE OFFERED FOR SALE TO

THE PUBLIC BY HERTZ.

7. Misrepresenting or disparaging, directly or indirectly, orally or in writing, the purchaser's opportunity to peruse the repair records for any used motor vehicle prior to the consummation of sale of such used motor vehicle.

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 respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel engaged in any aspect of preparation, creation, or placing of advertising and in the offering for sale, or sale, of any used motor vehicle, and that the respondent secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the respondent herein 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

NAGLE, SPILLMAN & BERGMAN, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2834. Complaint, Aug. 18, 1976 — Decision, Aug. 18, 1976

Consent order requiring a Los Angeles, Calif., advertising agency, among other things to cease misrepresenting that Adolph's salt substitute tastes like salt; misrepresenting the causal relationship between sodium intake and hypertension; salt reduction will result in better health; and that salt substitutes may be safely used without medical approval. Further, the order prohibits respondent from advertising salt substitutes without a warning statement that product should not be used by persons on potassium restricted diets, or without prior medical approval. Additionally, the order requires specific disclosures with regard to endorsements by professionals.

Appearances

For the Commission: *Sharon S. Armstrong.*
For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nagle, Spillman & Bergman, Inc., a corporation, hereinafter referred to as respondent, has violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent is a California corporation with its office and principal place of business located at 1800 North Highland, Los Angeles, California.

All allegations stated in the present tense include the past tense.

PAR. 2. Respondent was the advertising agency for Adolph's Ltd. (hereinafter Adolph's) from January 1972 to March 1974, and at all times relevant to this complaint. In such capacity respondent created, prepared, placed for publication and disseminated advertisements for Adolph's, including but not limited to the advertisements described herein, to promote the sale of Adolph's salt substitute, a "food" and "drug" (as those terms are defined in the Federal Trade Commission Act) which consists of potassium chloride and other ingredients and is used in place of table salt by persons who seek to restrict their intake of sodium.

PAR. 3. In the course and conduct of its business, respondent

disseminated and caused to be disseminated certain advertisements concerning Adolph's salt substitute, (1) by United States mail, magazines of interstate circulation, radio and television broadcasts of interstate transmission, and by various other means in or having an effect upon commerce, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of Adolph's salt substitute, and (2) by various means, for the purpose of inducing, or which are likely to induce, the purchase in or having an effect upon commerce of Adolph's salt substitute, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the advertisements disseminated as aforesaid, respondent made statements and representations concerning the therapeutic and prophylactic value of Adolph's salt substitute in the treatment of certain medical conditions.

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

NO. 1 KILLER OF BLACKS:

HYPERTENSION

The facts you are about to read could save your life or that of a loved one.

Hypertension is the single largest cause of all deaths in the United States. Of particular concern is the fact that black adults are especially prone to this disease. The incidence of hypertension among blacks is almost twice that of the general population. In fact, it is estimated this disease will afflict up to 25% of all black adults.

Why are black Americans so vulnerable to hypertension, high blood pressure and heart disease? Experts attribute it to factors relating to heredity, emotional and socio-economic pressures, obesity—and diet.

With respect to diet, the relationship between salt intake and hypertension or high blood pressure, one of the major causes of strokes and coronaries, is well established. That is why physicians treating hypertension almost invariably prescribe reduction of salt in the diet. Foods containing large amounts of sodium are severely restricted. Of course, no drastic dietary changes should be undertaken without consulting your doctor.

If you want to reduce your intake of salt or if your physician specifically prescribes a low sodium diet, you should know about America's leading salt substitute, Adolph's. This product looks, sprinkles and tastes like salt. That's why many doctors have been recommending it to their patients for over 15 years. You can find Adolph's Salt Substitute in the dietetic section of your food store. Available regular or seasoned.

Job 354 Ad No. A-63
1/4 page, B&W — Salt Substitute
Ebony — Tuesday
Nagle & Spillman, Los Angeles
1973

Cramps
aren't really the worst of it.

It's the premenstrual fatigue, depression, the bloated feeling that make so many women miserable. Some doctors believe these symptoms are aggravated by "edema," the condition when the body retains too much fluid. To help prevent edema, many doctors suggest reducing salt intake for 10 days before each period. If your doctor suggests this, you're probably looking for a good salt substitute—so you can still have some zest in your food while cutting down on salt. Adolph's Salt Substitute looks, tastes, and sprinkles on just like salt and has no bitter aftertaste. It's in the dietetic section of your market.

Job 389 Ad A-70
1/6 Page — Salt Substitute, 1974
Family Circle
Woman's Day
Redbook
Cosmopolitan
Nagle & Spillman, Inc.
Los Angeles

ADVERTISEMENT:

By JEANNETTE FRANK
Nutritionist and Author

You May Be Eating More Salt Than You Should

Nutrition authorities caution against excessive salt intake. But there is an easy and appetizing alternative.

AMERICAN eating patterns are undergoing revolutionary changes. More than ever before, people are consuming more of their meals away from home. The spectacular growth of chain restaurants is testimony to this trend. Between-meal snacking is another current phenomenon as is the popularity of pre-prepared convenience foods. It seems we are eating or snacking all day long, frequently away from home, and often on the run. Many meals are even being consumed in our cars!

The accelerating pace of modern living has certainly changed our eating habits. But it has also brought in its wake an increase in our consumption of sodium chloride, ordinary table salt. Snack foods, convenience foods, foods served in restaurants tend to be heavily seasoned with salt. And salt, that generally harmless, most common of all household staples, may not be medically indicated when consumed in excessive quantities.

What are the possible nutritional pitfalls of salt? The connection between salt intake and hypertension or high blood pressure, one of the major causes of strokes and coronaries, has been known since the beginning of the century. But there are many other reasons to avoid salt. Excess salt holds fluid in body tissues, and retained fluid may contribute to problems related to overweight. Some doctors advise reduction of salt intake to women suffering excessive discomfort and depression resulting from menstruation. Arthritis sufferers are sometimes advised to reduce sodium intake when undergoing steroid therapy. Of course, no drastic dietary changes should be undertaken without consulting your doctor.

If you want to reduce your intake of salt or if your physician specifically prescribes a low sodium diet, you should know about America's leading salt substitute, Adolph's. This product looks, sprinkles and tastes like salt and has no bitter aftertaste. That's why many doctors have been recommending it to their patients for over 15 years. You can find Adolph's Salt Substitute in the dietetic section of your food store. Available regular or seasoned.

TV VIOLENCE IS HARMFUL 41

put vast control o[ver] our children's minds into the hands of broadcasters, toy and food manufacturers, and other commercial interests whose dominant concern is what's good for profits and sales. "We are the only nation whose broadcasting treats children as a means of advancing corporate profits and not as a national treasure," says Mrs. Cooney.

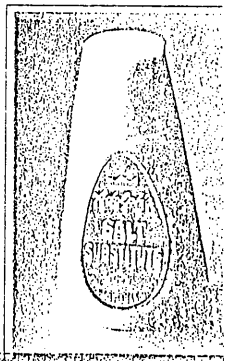
Toward Concrete Reforms. What can be done about this scandalous situation?

First, we must refrain from using television as a baby-sitter. One Advisory Committee survey of parents of 274 first-graders shows that one third actually encouraged their children to watch TV just to keep them occupied—in some cases for five or more hours daily. Schools, churches, PTAs and other groups should ask their television stations for public-service time to present the message: "Too much TV can be hazardous to your child's mental health." In addition, parents must spend more time watching with their children, and simply shutting off the violent programs. Since reading the Advisory Committee's research findings, I have adopted this rule with my own daughters.

Second, we need an independent system of television evaluations provided by child-development specialists. Under a Department of Health, Education and Welfare grant, the University of Pennsylvania is attempting to develop an objective method of monitoring trends in the level of network-television violence and correlating them with children's behavior. We also need to evaluate the beneficial programs. Studies show that programs like "Sesame Street," "Electric Company," and "Mister Rogers' Neighborhood" produce truly marvelous benefits in our children's learning. Perhaps the FCC could require stations to give advance publicity to such an objective rating guide so parents could decide for themselves the programs their children should watch."

Third, the FCC has before it a

"The FCC has this power. Under Congressional mandate, it awards on the exclusive use of the governmentally protected public airwaves, in return for which broadcasters agree to program "in the public interest" as defined and supervised by the seven FCC members.



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

A. The relationship between salt intake and hypertension is well established.

B. Use of Adolph's salt substitute in place of table salt will result in a reduction of sodium intake to a level low enough to:

1. Save the lives of blacks and other people;
2. Reduce the causes and effects of, or prevent, hypertension, high blood pressure, heart disease, strokes and coronaries in blacks and others;
3. Reduce the causes and effects of, or prevent, premenstrual edema and other discomforts associated with menstruation in women, including fatigue, depression, and bloatedness.

C. Adolph's salt substitute may be used safely without prior physician approval.

D. Physicians treating hypertension and premenstrual edema prescribe reduction of salt intake for these conditions.

E. Adolph's salt substitute tastes like table salt.

PAR. 6. In truth and in fact:

A. While some medical authorities suggest there is data which apparently supports a representation that there is a connection between sodium intake and hypertension, the relationship between salt or sodium intake and hypertension is not well established.

B. A significant amount of sodium is ingested through the consumption of other foods and water in the diet. If other dietary habits are not modified, it is highly unlikely that use of Adolph's salt substitute in place of table salt will result in a reduction in sodium intake to a level low enough to be medically effective. The use of Adolph's salt substitute by any person regardless of race or sex without other medically prescribed measures will not save life, is highly unlikely to reduce the causes and effects of, or prevent, hypertension, high blood pressure, heart disease, strokes, coronaries, premenstrual edema or any discomfort associated with menstruation.

C. Adolph's salt substitute should not be used without prior physician approval. Even the label on the Adolph's salt substitute container states that it should be used only on the advice of a physician. Unless managed by a physician, a sodium-restricted diet may be dangerous to persons with impaired sodium retention mechanisms or

endocrine imbalances, and persons subject to vomiting, excess sweating, or diarrhea. Furthermore, ingestion of potassium contained in Adolph's salt substitute may be harmful to persons with renal insufficiency.

D. Physicians treating hypertension and premenstrual edema do not always prescribe reduction of salt intake for these conditions; indeed, many physicians use drug therapy or other measures instead of or in combination with salt intake reduction.

E. Adolph's salt substitute does not taste like table salt.

PAR. 7. In view of the allegations set forth in Paragraphs Five and Six, the following are material facts which respondent failed to disclose in its advertising of Adolph's salt substitute:

A. Before using Adolph's salt substitute an individual should consult a physician to determine whether the product is necessary or safe for his or her use.

B. Adolph's salt substitute should not be used by persons on a potassium-restricted diet.

Such facts are "material" as defined in Section 15 of the Federal Trade Commission Act, and, if known to potential customers, would be likely to affect their decision to purchase Adolph's salt substitute.

PAR. 8. In the further course and conduct of its business respondent disseminated and caused the dissemination of a magazine advertisement set out in the format of a news article with the name "Jeannette Frank" and the title "Nutritionist" placed at the heading of the article in a manner indicating authorship. In the use of said advertisement, respondent failed to disclose that Jeannette Frank is an employee of Adolph's. Such fact is material and, if known to potential customers, would be likely to affect their decision to purchase Adolph's salt substitute.

PAR. 9. The advertisements referred to in Paragraphs Four, Seven and Eight are misleading in material respects, as alleged in Paragraphs Six, Seven and Eight, and constitute "false advertisements," as that term is defined in Section 15 of the Federal Trade Commission Act, and the statements, representations and omissions described in Paragraphs Five, Seven and Eight are misleading, deceptive and unfair acts or practices.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive and unfair statements, representations, acts and practices and the dissemination of the aforesaid "false advertisements" has the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations are true, and

into the purchase of substantial quantities of Adolph's salt substitute by reason of said erroneous and mistaken belief.

PAR. 11. In the course and conduct of its business, respondent is in substantial competition in commerce with corporations, firms and individuals engaged in the sale of services of the same general kind and nature as are sold by respondent.

PAR. 12. The aforesaid acts and practices of respondent, including the dissemination of "false advertisements" as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

A. Respondent Nagle, Spillman & Bergman, Inc. is a California corporation with its office and principal place of business located at 1800 North Highland, Los Angeles, California.

B. 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 Nagle, Spillman & Bergman, Inc., a corporation, its successors and assigns, 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 Adolph's salt substitute or any similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Making any representation orally, visually or in any other manner, directly or by implication:

1. That the causal relationship between salt or sodium intake and the onset of hypertension is well-established.

2. That a causal relationship between salt or sodium intake and hypertension or any condition or disease exists, or that a reduction in the level of sodium intake will promote or maintain good health, unless

a. at the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation, and

b. respondent discloses in conjunction with any such representation that the existence of such causal relationship is disputed by qualified experts, unless respondent neither knows nor has reason to know that such dispute exists.

3. That use of any such product in place of table salt will result in a reduction of sodium intake to a level low enough to help save the lives of blacks or any other consumers.

4. That any such product may be used safely without prior physician approval.

5. That any such product tastes like table salt.

6. That use of any such product in place of table salt will result in a reduction of sodium intake to a level low enough to be in any way medically effective in the prevention or treatment of any disease or condition, including, but not limited to, cardiovascular disease or menstrual condition, unless at the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation.

B. Disseminating or causing the dissemination of any advertisement of any such product, unless respondent clearly and conspicuously discloses, with nothing to the contrary or in mitigation thereof, the following:

WARNING: BEFORE USING THIS PRODUCT, CONSULT
YOUR PHYSICIAN TO FIND OUT IF IT IS
NECESSARY OR SAFE FOR YOUR USE.
THIS PRODUCT SHOULD NOT BE USED BY
PERSONS ON A POTASSIUM-RESTRICTED
DIET.

II.

It is further ordered, That respondent Nagle, Spillman & Bergman, Inc., a corporation, its successors and assigns, 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 Adolph's salt substitute or any other food or drug, in or affecting commerce, as "food," "drug" and "commerce" are defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from making any representation orally, visually or in any other manner, directly or by implication:

A. As to the treatment prescribed by physicians for any medical condition or disease.

B. As to the cause, prevention or cure of any medical condition or disease, unless,

1. At the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation, and

2. Respondent discloses in conjunction with any such representation that the existence of such causal relationship or the efficacy of such preventitive measures or cure is disputed by qualified experts, unless respondent neither knows nor has reason to know that such dispute exists.

C. As to the safety or efficacy of any such product, unless at the time such representation is made, respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation.

D. The endorsement of such product by nutritionists or any other person, organization or association has been given without compensation when such is not the fact; or failing to disclose the fact of

compensation unless the endorser is an expert, or the endorser is known to a significant portion of the viewing public, or the compensation or promise of compensation was given subsequent to the giving of the endorsement.

E. Such product is endorsed by nutritionists or any other person, organization or association without disclosing that such nutritionist, other person, organization or association either in whole or in part owns or is owned by, or is employed by the advertiser, unless such is not the fact.

III.

It is further ordered, That respondent Nagle, Spillman & Bergman, Inc., a corporation, its successors and assigns, 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 salt substitute or any "food" or "drug," as those terms are defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mail or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains a representation or testimonial prohibited by Paragraphs I or II of this order or which omits a disclosure for such product required by Paragraphs I and II of this order.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains a representation or testimonial prohibited by Paragraphs I and II of this order or which omits a disclosure for such product required by Paragraphs I and II of this order.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its present and future officers, directors and operating divisions and that respondent secure from each such person and division a signed statement acknowledging receipt of this order.

V.

It is further ordered, That respondent maintain complete business

records relative to the manner and form of its continuing compliance with the terms and provisions of this order. Each record shall be retained by respondent for at least three years after it is made.

VI.

It is further ordered, That respondent notify the Commission at least thirty 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.

VII.

It is further ordered, That respondent shall, within sixty days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

E. & J. GALLO WINERY

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

Docket C-2836. Complaint, Aug. 26, 1976—Decision, Aug. 26, 1976

Consent order requiring a Modesto, Calif. winery, among other things to cease, for a ten-year period, establishing and maintaining exclusionary marketing policies and enforcing them through coercion of wholesalers. The order diminishes respondent's involvement in the operations of its wholesalers by limiting its ability to obtain financial information from its wholesalers and prohibits respondent from becoming involved in the financial obligations of such wholesalers. Further, respondent is prohibited from imposing certain conditions which could operate to the exclusion of competing wineries.

Appearances

For the Commission: *Rafe H. Cloe.*

For the respondent: *Elliot S. Kaplan, Robins, Davis & Lyons,* Minneapolis, Minn.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporate respondent has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) by its various acts and practices described herein, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and states its charges as follows:

I

DEFINITIONS

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

A. Table wines are still (noneffervescent) wines. Their alcohol content is not over 14 percent by volume.

B. Dessert or sweet ("dessert") wines are still wines. Their alcohol content is over 14 percent but not over 24 percent by volume.

C. Sparkling wines are effervescent wines. Their alcohol content usually ranges from 10 to 14 percent by volume.

D. Wholesaler is a duly licensed person or entity (other than a governmental purchaser or an entity or division owned in whole or in part by respondent or any officer(s) or director(s) of respondent) authorized by respondent to sell or distribute its wines to others.

E. Operating costs of doing business shall not include services performed by a wholesaler for respondent at respondent's request, such as, but not limited to, market surveys, local placement of respondent's advertising, display installation services, employment of campus representatives, training of salesmen whom respondent intends to employ, product sampling, gifts of wine, stenographic and office services requested by respondent's employees, officers and agents, when they are away from respondent's Modesto, California offices, or expenses incurred by a wholesaler in connection with breakage, off-conditioned wine and services in transferring wines to other wholesalers.

F. Management Services are staff consulting services performed by respondent at the request of a wholesaler with regard to one or more areas of such wholesaler's operations, which may include, where respondent's recommendations are adopted by such wholesaler, temporary assistance in training and implementation.

II

RESPONDENT

2. Respondent Gallo is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 600 Yosemite Boulevard, Modesto, California. Respondent's primary function is the production and sale of wines. Respondent currently sells more than 40 different wines through over 300 independent wholesalers.

3. At all times relevant herein, respondent has sold wines in interstate commerce and engaged in "commerce" within the meaning of Section 5 of the Federal Trade Commission Act.

III

TRADE AND COMMERCE

4. For purposes of this complaint, the relevant product market is the distribution and sale of wines. The relevant geographic market is the United States.

5. Wine sales in the United States have experienced a major expansion. They have increased from 145,186,000 gallons in 1955 to 347,268,000 gallons in 1973. Except for 1962, there has been a constant increase in total wine sales. During the years 1969 through 1972, increases in sales were dramatic, with annual rates of growth exceeding 10 percent. However, in 1973, the annual rate of growth was less than 10 percent.

6. Table wine sales have generally followed the pattern of total industry sales. They increased steadily between 1955 and 1973. With the exception of 1972 and 1973, sparkling wine sales have constantly increased during this period. Dessert wine sales have decreased since 1955.

7. The wine industry is marked by increasing concentration. In 1968, the Nation's four largest wineries had 48 percent of wine sales in the United States. By 1972, top four concentration had increased to approximately 55 percent. The top 10 wineries in 1972 accounted for almost 70 percent of the wine sold in this country. Remaining sales were divided among over 300 United States wineries and many importers.

8. Respondent is the largest seller of wine in the United States. Its share of total wine sales increased from 22.7 percent in 1967 to 28.8 percent in 1973. During this period, respondent's increase in gallonage sales represented 38 percent of the growth of total industry sales. In 1973 respondent's sales of approximately 100 million gallons were twice those of its nearest competitor.

9. Respondent's share of table wine sales increased from 25.2 percent in 1967 to 38.6 percent in 1971 and declined to 31 percent in 1973. Although respondent was not among the four largest producers of sparkling wine in 1967, by 1973 it was the largest with 34.8 percent. Respondent's share of dessert wine sales increased from 22.9 percent in 1967 to 24.8 percent in 1973.

10. There are barriers to entry to any firm wishing to make a significant entrance into the wine business. Obtaining the services of viable wholesalers may be a barrier. Wineries affiliated with sellers of other alcoholic beverages have an advantage in obtaining distribution for their wines.

11. Laws regulating alcoholic beverage distribution are a barrier to entry. Each State, the District of Columbia and the Federal government have their own laws regulating alcoholic beverage distribution. With a few exceptions, wines must be distributed through wholesalers. In addition, wholesalers may not distribute their wines across state lines. Thus, a winery is more limited in the distribution channels it may select than is a company not producing alcoholic beverages.

IV

CHARGE

12. Respondent has used its dominant position, size and power to lessen, hinder or restrain competition in the sale and distribution of wines in the United States by engaging in various unfair acts, practices

and methods of competition including, but not limited to, the establishment and maintenance of exclusionary marketing policies and their enforcement through coercion of distributors. Beginning in 1970 respondent ceased many of said unfair acts, practices and methods of competition.

V

EFFECTS

13. The effects of respondent's acts, practices and methods of competition may be, among others, to:

A. Discourage, limit and/or prevent the growth of new wineries.

B. Lessen, hinder and restrain competition in the sale of wines in the United States.

C. Preserve, maintain and further: (1) levels of concentration and (2) barriers to entry.

VI

VIOLATIONS

14. Through unfair methods of competition, respondent has lessened, hindered and restrained competition in the sale and distribution of wines in the United States in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent E. & J. Gallo Winery is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located in Modesto, California.

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

ORDER

I

It is ordered, That respondent, its subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives or employees, directly or indirectly on behalf of respondent or through any corporate or other device acting on behalf of respondent in connection with the distribution, offering for sale or sale of its wines within any or all of the fifty (50) States of the United States of America and the District of Columbia, for a period of ten (10) years from the date of issuance of this order shall cease and desist from:

1. Requiring the submission of financial statements from any wholesaler, except for credit or management services purposes; or conditioning the granting or extension of credit to any wholesaler on such wholesaler's submitting of financial statements which disclose the operating results and financial position specifically attributable to any segment of such wholesaler's business. *Provided, however*, respondent may require financial statements from an applicant not then purchasing wine from respondent, who desires to become a wholesaler of respondent's wines.

2. Guaranteeing all (or any part) of any loan for any wholesaler, assuming all (or any part) of the capital expenses of any wholesaler, or assuming all (or any part) of the operating costs of doing business of any wholesaler.

3. Prohibiting any wholesaler from, or punishing such wholesaler for: (1) selling respondent's wines in any area in which such wholesaler

is permitted to operate by state license, or (2) dealing in wines produced by other companies.

4. Requiring any wholesaler to distribute any of respondent's wines in order to obtain any other wine produced or imported by respondent.

5. Entering into distribution agreements or other contracts with its wholesalers with a provision(s) for crediting or charging the wholesaler with respect to respondent's wines in such wholesaler's warehouse or in transit to such wholesaler to reflect any new price(s) charged by respondent. Respondent agrees to offer to all of its wholesalers operating pursuant to a contract having such a provision(s) on the date of issuance of this order an amended contract without such a provision(s) and request that it be accepted.

II

It is further ordered, That:

1. For a period of ten (10) years from the date of issuance of this order, respondent shall maintain a separate file in Modesto, California, that will be available to employees of the Federal Trade Commission for inspection and copying upon ten (10) days written notice. The file shall contain the following and the enumerated items will be retained in the file during the period covered by this order.

(a) A written description of the facts surrounding each instance in which respondent did not comply with any of the provisions in this order because of a conflict with Federal or State laws and/or regulations as well as copies of any applicable documentation.

(b) A written description of the facts surrounding each instance in which respondent, as permitted by Order Provision I, reviewed a wholesaler's financial data in order to provide management services. A copy of such wholesaler's request for services must be attached as well as copies of any documents prepared by respondent in performing the services.

(c) A list containing an itemized listing of the financial statements respondent received from wholesalers and the name and address of each such wholesaler. Respondent shall retain copies of such financial statements during the period covered by this order.

(d) A list of all terminated wholesalers. In addition to the name and address of each wholesaler, the list shall include a written description of the reason(s) for termination. Respondent shall retain copies of any relevant documents relating to terminated wholesalers during the period covered by this order.

(e) A list of all new wholesalers, including each wholesaler's name and address.

2. If no other provision of this order or State or Federal law is

violated thereby, respondent: (1) may appoint one or more additional duly licensed wholesaler(s) to distribute one or more of its wines in any geographical area in which another wholesaler is then distributing respondent's wines; (2) shall not be required to sell any of its wines to a wholesaler who is purchasing other wines from respondent; or (3) may terminate any wholesaler for cause or in accordance with the terms and conditions of the agreement of distributorship between respondent and that wholesaler.

3. Within fifty (50) days after service upon it of this order, respondent shall distribute a copy of such order to each of its existing wholesalers. All wholesalers appointed by respondent within ten (10) years after the date of this order are to be furnished copies of this order. If this order is modified, all then existing wholesalers are to receive copies of the modification.

4. For a period of ten (10) years respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this order.

5. Within sixty (60) days after service upon it of this order, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, including a list of all wholesalers to whom it has sent a copy of this order, and shall file such other reports as may, from time to time, be required in order to assure compliance with the terms and conditions of this order.

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

IN THE MATTER OF

LEVITZ FURNITURE CORPORATION

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

Docket C-2835. Complaint, Aug. 30, 1976 — Decision, Aug. 30, 1976

Consent order requiring a Miami, Fla., furniture retailer, among other things to cease misrepresenting and/or failing to disclose pertinent information regarding prices, sales, limited offers, warranties, construction, composition and use of its products; failing to make timely repairs, adjustments, and refunds; and failing to maintain appropriate records. Additionally, respondent must provide its advertising agencies with copies of the F.T.C.'s news release concerning this order for a one-year period.

Appearances

For the Commission: *Richard F. Kelly* and *Alan L. Cohen.*

For the respondent: *Henry P. Sailer, Theodore L. Garrett, Covington & Burling,* Washington, D.C.

COMPLAINT

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

PARAGRAPH 1. Respondent Levitz Furniture Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 1400 N.W. 167th St., Miami, Florida.

Said respondent formulates, directs and controls the acts and practices of its organizational division, Classic House, and its wholly-owned subsidiary corporations, Levitz Furniture Company of the Eastern Region, Inc., Levitz Furniture Company of the Midwest, Inc., Levitz Furniture Company of the Pacific, Inc., Levitz Furniture Company of Arizona, Inc., Levitz Furniture Company of Texas, Inc. and Levitz Furniture Company of Washington, Inc.

Respondent formulates, directs and controls, directly or through its wholly-owned subsidiaries, the acts and practices of a chain of some

sixty (60) retail stores, located in twenty-seven (27) States of the United States, including the acts and practices hereinafter set forth.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of household furniture. Respondent is one of the largest furniture retailers in the United States with sales from its retail outlets in 1974 approximating $350 million.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, advertising layouts, sales memoranda, policy directives, and other documents and communications to be transmitted, by the United States mail, to and from respondent's offices and said retail stores located in various States of the United States.

In the further course and conduct of its business, respondent sells and distributes and has sold and distributed household furniture in commerce by causing said furniture to be shipped from places of business of its several suppliers, located in various States of the United States, to storage points and to said retail stores for sale to the purchasing public, located in States other than those from which said shipments originate. In the further course and conduct of its business, respondent now causes and has caused said household furniture to be shipped across States lines from its retail stores to purchasers located in various States of the United States other than those from which said shipments originate and in the District of Columbia.

In the further course and conduct of its business, respondent now causes, and has caused, advertisements for household furniture to be published in media of interstate circulation and to be broadcast by television and radio stations having sufficient power to carry such broadcasts across State lines, which are designed and intended to induce persons to purchase said household furniture.

Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its household furniture, respondent has made, and is now making, numerous statements and representations by means of television and radio broadcasts by stations located in various States of the United States and the District of Columbia, having sufficient power to carry such broadcasts across State lines, by means of advertisements inserted in newspapers of interstate circulation, by means of tags affixed to merchandise on display in respondent's showrooms, and by means of oral statements and representations of its

salesmen and other agents and employees to prospective customers with respect to its products and services.

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

* * * * * * *

(1)(a) "The President Only Froze Prices* * *Levitz Actually *Lowers* Prices! 'PHASE 5' PRICE REDUCTION SALE!

Documented Price Reductions *Below Freeze* Levels on These and Thousands More Unadvertised Items* * **While Present Warehouse Stock Lasts!!!*

SPECIAL
NOTICE!

Due to the tremendous savings all items must be sold on a first come first served basis! * * *great savings* * * ."

* * * * * * *

(b) "Levitz Lowers Prices On Thousands of Famous Brand Furniture Items"

* * * * * * *

(c) "New Reduced Price"

* * * * * * *

(2)(a) "INVENTORY TAX SALE We must pay a tax on all furniture in our inventory as of March 1* * *. Help us reduce our inventory and we will pass the savings on to you."

* * * * * * *

(b) "After-Inventory Sale! Look What We Found When We Took Inventory! Hundreds of furniture finds that must be moved out to balance our stock* * *right now! The prices are incredibly low, the savings huge!"

* * * * * * *

(3) "15 Year Warranty"

* * * * * * *

(4) "Selling Direct to the Public"

* * * * * * *

(5) "Item *BASSET KING HDBD.*
2 WAYS TO BUY!

No. 1
LEVITZ
DELUXE
WAY * * * $139.95

Designed for the Customers Who Want the Utmost in Services! Free predelivery preparation, free time scheduled delivery, free set up in home, free storage for faster delivery, free services in your home, approvals, free 30 day charge, free decorator services, custom orders!

No. 2
LEVITZ
WAREHOUSE
WAY * * * $98

Designed for Those Customers Who Want Maximum Savings! Pick up price on our stock, in the original factory containers! Delivery and all other services available as extra options!"

* * * * * * *

(6) "ASHTRAY
Retail $9.40
Pick-Up $7.66"

* * * * * * *

(7) "CHEST
~~$69.95~~ $49.00"

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

(1) By and through the use of the words "sale" and "reductions," as set out in Paragraph Four (1), and other words of similar import and meaning not specifically set out herein, separately and in conjunction with the words "tremendous savings," "great savings," and by and

through the use of the words "Levitz Lowers Prices," "New Reduced Price," and other words of similar import and meaning not specifically set out herein that:

(a) Said merchandise could be purchased at reduced prices, and purchasers were thereby afforded savings from respondent's regular selling prices.

(b) Said merchandise was available at reduced selling prices for only a limited period and would return to and, for a reasonable period of time, remain at some substantially higher amount after the expiration of the limited period.

(c) The price at which such merchandise was being offered constituted a significant reduction from respondent's previously established regular selling price.

(2) By and through the use of the words "Documented Price Reductions* * *on Thousands More Unadvertised Items," "Levitz Lowers Prices on Thousands of Famous Brand Furniture Items," as set out in Paragraph Four (1), and other words of similar import and meaning not set out specifically herein, that respondent has reduced the price, in an amount not so small as to be insignificant, on at least two thousand (2,000) different furniture items.

(3) By and through the use of the words "Inventory Tax Sale" and "After Inventory Sale," as set out in Paragraph Four (2), and other words of similar import and meaning not specifically set out herein, that respondent has reduced prices as a consequence of the unusual sale event and, thereby, implied that the public should act immediately to take advantage of these unusual circumstances.

(4) By and through the use of the words "15 year warranty," as set out in Paragraph Four (3), and other words of similar import and meaning not specifically set out herein, that certain of respondent's products were unconditionally guaranteed for a period of fifteen years.

(5) By and through the use of the words "direct to the public," as set out in Paragraph Four (4), and other words of similar import and meaning not specifically set out herein, that respondent was a wholesaler or wholesale distributor.

(6) By and through the use of said tags and representations as set out in Paragraph Four (5)-(7), and other words of similar import and meaning not specifically set out herein, that:

(a) The No. 1 Levitz Deluxe Way price was a bona fide selling price of respondent;

(b) The retail price was a bona fide selling price of respondent; or at the time it made that representation, respondent had a reasonable basis from which to conclude that the retail price was the price being charged

by other furniture retailers in respondent's trade area for identical merchandise and services; and

(c) The crossed out price was a previously established former selling price of respondent.

PAR. 6. In truth and in fact:

(1) In some instances, respondent's merchandise was not being offered for sale at reduced prices. To the contrary:

(a) Many of respondent's represented reduced selling prices were not returned to, or if returned did not for a reasonable period of time remain at, some other substantially higher amount. Instead said prices remained at or near, or subsequently returned to or near, the represented reduced prices. Thus the period during which the reduced prices were available, was not, in these instances, limited as stated in said advertisements.

(b) Many of respondent's represented reduced prices were not reduced. Where respondent did reduce its regular selling prices, the amount of the reduction was, in some instances, insignificant.

(2) Respondent did not reduce the price, in an amount not so small as to be insignificant, on at least two thousand (2,000) different furniture items. Instead, respondent reduced a substantially lesser amount of items.

(3) In some instances, respondent did not reduce prices as a consequence of the special event. Rather, said sale events were used by respondent for the purpose of creating a sense of urgency in the purchasing public.

(4) Certain of respondent's products were not unconditionally guaranteed. To the contrary, such guarantees were subject to substantial conditions and limitations not disclosed in respondent's advertisements.

(5) Respondent is not a wholesaler or a wholesale distributor.

(6) (a) The No. 1 Levitz Deluxe Way price was not a bona fide selling price of respondent. Few, if any, sales were made at said price.

(b) The retail price was not a bona fide selling price of respondent. Few, if any sales were made at said price. Nor, did respondent have a reasonable basis from which to conclude that the retail price was the price being charged for identical merchandise and services by other retailers in the respondent's trade area;

(c) The crossed out price was not a previously established former selling price of respondent. No sales were made at said price.

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

PAR. 7. In the course and conduct of its business, and for the purpose

of inducing others to purchase its furniture, respondent has made by means of television and radio broadcasts and by means of advertisements inserted in newspapers various statements and representations with respect to the composition of its household furniture.

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

(1) "Walnut," "Pecan," "Solid Rock Maple;"

(2) "Walnut Finish," "Pecan Finish," "Finished in Rich Oak;"

(3) "Foam;"

(4) "Spanish," "Italian," and "French."

PAR. 8. By and through the use of the above-quoted statements and representations, and by use of other statements and representations of similar import and meaning, not expressly set out herein, respondent has represented, directly or by implication, that:

(1) The exposed surfaces of certain of its furniture referred to in Paragraph Seven (1) are constructed of solid walnut, solid pecan, and solid maple, respectively;

(2) The exposed surfaces of certain of its furniture referred to in Paragraph Seven (2) are constructed of solid walnut, solid pecan, and solid oak, respectively;

(3) The stuffing of certain of its furniture referred to in Paragraph Seven (3) is composed of solid latex foam rubber;

(4) Certain of its furniture referred to in Paragraph Seven (4) is of Spanish, Italian or French origin.

PAR. 9. In truth and in fact, in many instances:

(1) The exposed surfaces of such furniture referred to in Paragraphs Seven (1) and Eight (1) were not constructed of solid woods. Instead, the exposed surfaces were constructed of a combination of veneers of the woods named and other woods;

(2) The exposed surfaces of such furniture referred to in Paragraphs Seven (2) and Eight (2) were not constructed of woods. Instead, parts of the exposed surfaces were constructed of plastic or other material simulating wood;

(3) The stuffing of such furniture referred to in Paragraphs Seven (3) and Eight (3) was not composed of latex foam rubber. Instead, the stuffing was composed of polyurethane foam;

(4) Such furniture referred to in Paragraphs Seven (4) and Eight (4) was not imported from Spain, Italy or France. Instead, such furniture was manufactured in the United States.

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

PAR. 10. A substantial amount of respondent's furniture which is

advertised, displayed, offered for sale, and sold has the appearance of being made of solid wood but contains exposed surfaces in part of veneered construction. The fact of such veneered construction was not, in many instances, clearly and conspicuously disclosed in respondent's advertising and on such furniture or on tags or labels attached thereto.

Respondent's practice of advertising, displaying, offering for sale, and selling furniture of veneered construction which has the appearance of being made of solid wood, without clear and conspicuous disclosure in all advertising wherein said furniture was depicted with the appearance of being made of solid wood and on such furniture, or on a tag or label attached thereto, of such veneered construction, was misleading and deceptive and had the capacity and tendency to mislead members of the purchasing public in the mistaken belief that said furniture is constructed of solid wood.

PAR. 11. A substantial amount of respondent's furniture which is advertised, displayed, offered for sale, and sold has the appearance of being made of wood but contains substantial exposed surfaces composed of plastic or other materials not possessing a natural wood growth structure. In many instances, clear and conspicuous disclosure was not made in respondent's advertising and on such furniture, or on tags or labels attached thereto, that parts of the exposed surfaces of the furniture are made of plastic or other materials simulating wood, or in the alternative, that such parts are not of wood composition.

Respondent's practice of advertising, displaying, offering for sale and selling furniture containing exposed surfaces made of plastic or other materials not possessing a natural wood growth structure, but having the appearance of being wood, without clear and conspicuous disclosure in all advertising wherein said furniture was depicted with the appearance of being wood and on such furniture, or on tags or labels attached thereto, of the true nature of such plastic or other materials simulating wood, or in the alternative, without clear and conspicuous disclosure that such parts are not of wood, was misleading and deceptive and had the capacity and tendency to mislead members of the purchasing public in the mistaken belief that said furniture is constructed solely of wood.

PAR. 12. In the course and conduct of its business, respondent sells large quantities of merchandise for delivery in original factory cartons. In some instances, said furniture is delivered to purchasers with damages or defects and/or lacking one or more components or parts necessary to allow the purchased item to function as intended. In some instances, respondent has failed to promptly remedy the deficiency or refund the customer's money.

Therefore, the acts and practices of respondent as set forth above, were and are, unfair, misleading, and deceptive.

PAR. 13. In the course and conduct of its business, respondent purchases repossessed merchandise, exchanges new merchandise for used and places this repossessed and used merchandise in a section of its selling floor known as the "Outlet" or "As-Is" section.

Said merchandise, when placed in respondent's "Outlet" or "As-Is" section of its selling floor, has in many instances been offered for sale and sold to consumers without affirmative and specific indication that this merchandise is used or repossessed.

PAR. 14. The acts and practices of respondent as alleged in Paragraph Thirteen of failing to disclose the material fact that certain merchandise offered for sale in the "As-Is" or "Outlet" section of the selling floor was used, has had the tendency and capacity to mislead prospective customers into the erroneous and mistaken belief that such merchandise was new and into the purchase of such merchandise by reason of such erroneous and mistaken belief.

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

PAR. 15. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce, with corporations, firms and individuals in the sale and distribution of household furniture of the same general kind and nature as that sold by respondent.

PAR. 16. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and its failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission 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 it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Levitz Furniture Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 1400 N.W. 167th St., Miami, Florida.

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

ORDER

It is ordered, That respondent, Levitz Furniture Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of household furniture, or of any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(1) Using the words "sale," "reductions," or other words of similar import or meaning, in conjunction with the offering of multiproducts in advertisements where all of the items are not reduced from respondent's former price, unless the words "sale," "reductions," or other words of similar import or meaning are clearly and conspicuously

qualified by a statement which indicates that all items offered are not reduced, and unless the items that are not reduced are clearly and conspicuously set off and identified.

(2) Representing, directly or by implication, orally or in writing, that respondent has reduced its prices on all or part of its merchandise, unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondent for a reasonably substantial period of time in the recent, regular course of its business, and unless the dollar or percentage amount of each reduction is clearly and conspicuously disclosed on tags or labels affixed to such merchandise.

(3) Representing, directly or by implication, orally or in writing, that a reduced sale price is applicable to certain goods, unless such representation is true and unless, for all advertised goods:

(a) said goods have not been advertised at the same or substantially the same price during the thirty (30) days preceeding the first day of such sale, or

(b) respondent clearly and conspicuously discloses in said advertisements (in immediate conjunction with any specifically advertised goods) and on tags or labels affixed to said goods that the advertised sale price is a repeat sale price.

(4) Representing, directly or by implication, orally, or in writing, that respondent has lowered prices as a result of some unusual circumstances, unless said representation is true.

(5) Representing, directly or by implication, orally, or in writing, that, to take advantage of an offer, customers must act within a limited period of time, unless said representation is true.

(6) Failing to maintain and produce for inspection or copying, on demand by the Federal Trade Commission or its representatives, for a period of two (2) years, adequate records which disclose the facts upon which any savings claims, sales claims and other similar representations as set out in Paragraphs One through Five of this order are based. This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of the order.

(7) Representing, directly or by implication, orally or in writing, that any of respondent's products or merchandise are warranted or guaranteed unless the nature, extent and duration of the warranty or guarantee, the identity of the warrantor or guarantor, and the manner in which the warrantor or guarantor will perform thereunder, are clearly and conspicuously disclosed in immediate conjunction therewith, and unless respondent has the bona fide intention to promptly and fully

perform all of its obligations and requirements represented under the terms of each such warranty or guarantee.

(8) Using the words "direct to the public," or any other words of similar import and meaning, in any advertisements or any other material soliciting orders, or on signs in or affixed to any of respondent's places of business open to the public, or representing, directly or by implication, orally or in writing, that respondent is a manufacturer or wholesaler.

(9) Representing, directly or by implication, orally or in writing, that respondent's merchandise is offered for sale at a specified price, unless said price is a bona fide selling price of respondent.

(10) Representing, directly or by implication, orally or in writing, that by purchasing any merchandise or services of respondent, customers are afforded savings amounting to the difference between respondent's stated price and the price of others in respondent's trade areas or a manufacturer's suggested list price, unless, at the time of such representation, respondent has a reasonable basis for making such comparison.

Such reasonable basis shall consist of a determination of prices in respondent's trade area.

In making such determination, respondent must ascertain that:

(a) a substantial quantity of the compared product or service is being offered for sale or sold in the trade area at or above the represented price; and

(b) the compared product or service is the same and is offered with the same services, unless respondent's representations clearly and conspicuously disclose the differences in the product and in the services offered.

(11) Making any comparison, directly or by implication, orally or in writing, between a price at which a product or service is offered for sale and some other higher reference price, unless both the product or service and the nature of the reference price are clearly and conspicuously disclosed in immediate conjunction therewith.

(12) Using the terms "Walnut," "Pecan," "Maple" or any other wood name, or any other terms of similar import or meaning, to describe furniture not having all exposed surfaces constructed of solid wood of the type named; *provided, however,* that wood names may be nondeceptively used to describe the type of wood used in wood veneer surfaces of furniture if clear and conspicuous disclosure is made in immediate conjunction with the wood name that the wood name refers to the veneer composition; and *provided that,* when the described furniture also has exposed surfaces of solids or veneers of wood other than the type named, an additional clear and conspicuous disclosure is made in

immediate conjunction with the wood name (a) of the composition of the other exposed veneered and solid parts or, in the alternative, (b) of the exact locations of the wood name veneers.

(13) Using the terms "Walnut Finish," "Pecan Finish," "finished in rich oak" or any other wood name, or any other terms of similar import or meaning to describe furniture not having all exposed surfaces constructed of solid wood of the type named; *provided, however,* that wood names may be nondeceptively used to describe the grain design, color of a stain finish or other type of simulated finish which has been applied to a surface composed of something other than solid wood of the type named if clear and conspicuous disclosure is made in immediate conjunction therewith that the wood name used is descriptive of the grain design, color or other simulated finish.

(14) Using the term "foam" or any other terms of similar import or meaning to describe furniture stuffing or mattresses, or parts thereof, not composed of latex foam rubber; *provided, however,* that the word "foam" may be nondeceptively used to describe furniture stuffing or mattresses, or parts thereof, composed of foam of a composition other than latex rubber if clear and conspicuous disclosure is made in immediate conjunction therewith of the kind of foam used.

(15) Using the terms "Spanish," "Italian" and "French," or other terms indicative of foreign origin, as descriptive of furniture manufactured in the United States unless in immediate conjunction therewith it is clearly and conspicuously disclosed that such terms apply to the style of the furniture and not the country or region of its origin; *provided, however,* that nothing in this paragraph shall prohibit respondent from using the terms "French Provincial," "Italian Provincial" and similar terms which have acquired a secondary meaning descriptive of the style of furniture and considered to be nondeceptive by the Commission's Guides for the Household Furniture Industry.

(16) Advertising, displaying, offering for sale, selling, or placing in the hands of others for display or sales purposes any furniture having the appearance of being made of solid wood, but containing exposed surfaces of veneered construction, without clear and conspicuous disclosure of such veneered construction in all advertising wherein said furniture has the appearance of being made of solid wood, and on such furniture or on tags or labels attached thereto.

(17) Advertising, displaying, offering for sale, selling, or placing in the hands of others for display or sales purposes any furniture having the appearance of being made of wood, but containing exposed surfaces composed in whole or in part of plastic, or other materials not possessing a natural wood growth structure, without clear and conspicuous disclosure that such exposed surfaces are made of plastic,

or other materials simulating wood, or in the alternative, without clear and conspicuous disclosure that such exposed surfaces are not wood; such disclosures to be made (a) in all advertising wherein said furniture has the appearance of being made of wood, and (b) on such furniture or on a tag or label attached thereto.

(18) Misrepresenting, in any manner, or by any means, directly or indirectly, the kind or nature of the wood or other materials used in the manufacture of furniture or any part thereof.

(19) Failing to inform all customers at the time of sale that if furniture is delivered in a defective, damaged or incomplete condition, and the customer so notifies respondent within three business days of the receipt thereof, and respondent does not, within five business days thereafter, remedy such defect, damage or condition, the customer has the right to obtain a refund of all monies by permitting respondent to reclaim such merchandise in the condition in which it was delivered. Written notice of this right will be clearly and conspicuously furnished on the front of each customer's sales receipt. *Provided, however*, that this paragraph shall not apply to merchandise sold "as is" if those words conspicuously appear on the sales receipt.

(20) Failing to refund promptly all monies paid by customers entitled to such refund under the provisions of Paragraph Nineteen hereof.

(21) Failing to maintain and produce for inspection and copying, on demand by the Federal Trade Commission or its representatives, for a period of two (2) years, adequate records to disclose the facts pertaining to the receipt, handling and disposition of each communication from a customer, oral and written requesting contract cancellation, refund, replacement or repair, pursuant to Paragraphs Nineteen and Twenty hereof. This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of the order.

(22) Failing to, if for any reason respondent refuses to cancel a contract, repair or replace an item, or refund monies when requested by a customer pursuant to Paragraphs Nineteen and Twenty hereof, specify in writing with particularity the reason(s) for denial of the request and place copies of the written reason(s) for denial of the request in a separate file set up for this purpose along with copies of all documents related to the transaction in question, including correspondence to and from the customer and notes relating to phone conversations with the customer. This file will be maintained and produced for inspection and copying upon demand by the Federal Trade Commission or its representatives for a period of two (2) years. This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of the order.

(23) Failing, in connection with the offering for sale or sale of used

merchandise, to clearly and conspicuously disclose the fact that such merchandise has been previously used:

(a) in all advertising, sales and promotional literature;

(b) on the used merchandise, with sufficient permanency as likely to remain thereon until sale to the ultimate consumer; and

(c) on customer sales receipts utilized for the sale of such used merchandise.

(24) Misrepresenting, in any manner, the nature, extent or degree of use of any merchandise offered for sale by respondent.

(25) Failing to maintain and produce for inspection and copying, on demand by the Federal Trade Commission or its representatives, for a period of two (2) years, adequate records which will show:

(a) all communications to or from respondent concerning the processing, offering for sale and sale of used furniture; and

(b) all records prepared in the processing of, offering for sale and sale of used merchandise.

This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of this order.

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

It is further ordered, That respondent, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondent, in connection with the sale of household furniture and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

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

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

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

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

IN THE MATTER OF

KANE-MILLER CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECTION 8 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9034. Complaint, June 17, 1975 — Decision, Sept. 1, 1976

Consent orders requiring two manufacturers and sellers of meat and meat products, Kane-Miller Corp. of Tarrytown, N.Y., and United Brands Co. of New York City, among other things, to cease permitting individuals to simultaneously serve on their boards of directors and those of their competitors. Further, respondents are required to establish procedures designed to detect the existence of unlawful interlocking directorates; and for a period of five years, obtain annually written certification from current and prospective board members that they are not serving on the boards of competitive companies. The complaint as to the individual respondent, Joseph M. McDaniel, Jr., was dismissed by order of the Commission dated May 6, 1976, upon his resignation from the board of directors of Kane-Miller Corp.

Appearances

For the Commission: *Joseph Tasker, Jr.*, *Ronald A. Bloch* and *Clinton R. Batterton.*

For the respondents: *Wald, Harkrader & Ross*, Washington, D.C. *Kaye, Scholer, Fierman, Hays & Handler*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Kane-Miller Corp. (hereinafter Kane-Miller) is a New York corporation, and maintains its principal office at 555 White Plains Rd., Tarrytown, New York. Kane-Miller has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent United Brands Co. (hereinafter United Brands) is a New York corporation, and maintains its principal office at 245 Park Ave., New York, New York. United Brands has capital, surplus, and undivided profits aggregating more than one million dollars, and is

engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Joseph M. McDaniel, Jr. is a resident of the Commonwealth of Pennsylvania.

PAR. 4. Respondent McDaniel is a member of the Board of Directors of each of the herein named corporate respondents.

PAR. 5. The business of the corporate respondents, Kane-Miller and United Brands includes the manufacture and sale in commerce of meat products.

PAR. 6. Kane-Miller and United Brands by the nature of their business as set forth in Paragraph Five above and location of operations with respect to said products, are competitors of each other. The elimination of competition with respect thereto by agreement between Kane-Miller and United Brands would constitute a violation of the antitrust laws.

PAR. 7. Therefore, the simultaneous presence of respondent Joseph M. McDaniel, Jr. on the Board of Directors of respondent Kane-Miller and United Brands constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

ORDER AS TO INDIVIDUAL RESPONDENT

JOSEPH M. MCDANIEL, JR.

MAY 6, 1976

It is ordered, That the complaint against the individual respondent, Joseph M. McDaniel, Jr., be and it hereby is *dismissed.*

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5(a) (1) of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; 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 heretofore 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 other provisions as required by the Commission's Rules; and

The Commission having thereafter issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Kane-Miller Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 555 White Plains Road, Tarrytown, New York.

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

ORDER

I

It is ordered, That Kane-Miller Corp. ("Kane-Miller"), a Delaware corporation, its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its Board of Directors if such individual is or would be at the same time a director of United Brands Company, a New Jersey corporation, so long as United Brands Company and Kane-Miller compete in the production or sale of any product by virtue of their business and location of operation.

II

It is further ordered, That Kane-Miller shall, within sixty (60) days after the service upon it of this order, and annually for each of the five years after said date of service, transmit to each nominee or director a copy of the complaint and order in this proceeding together with a request that each nominee or director certify to Kane-Miller in writing that he does not serve on the Board of Directors of any corporation that (1) is in or affects "commerce" as defined in Section 1 of the Clayton Act, as amended, or Section 4 of the Federal Trade Commission Act,

223-239 O - 77 - 19

and that (2) has sales in commerce or affecting commerce, in competition with Kane-Miller by virtue of business and location of operation, in excess of $1,000,000 annually, or from which one percent (1%) or more of such corporation's gross sales revenue is derived, whichever is less, in any of the following: (a) products the content of which is more than fifty percent (50%) meat, or meat by-products; (b) margarine, or vegetable fats or oils; (c) baked goods or recycled bakery waste; (d) prepared salads, prepared salad dressings, or prepared puddings; (e) cheese; (f) wine; (g) canned peas, corn, lima beans, tomatoes (including juice and catsup), sweet potatoes, white potatoes or asparagus; (h) wholesale food distribution; (i) restaurants; or (j) any product in a list to be prepared by Kane-Miller and transmitted to each such nominee or director simultaneously with the request for certification, which list shall include each and every product listed in subparagraphs (a) through (i) above together with each and every additional product for which Kane-Miller has sales in or affecting commerce in its prior fiscal year in excess of $1,000,000, or from which it derived one percent (1%) or more of its gross sales revenue, whichever is less, and which is contained in the seven-digit code and product description in the *Numerical List of Manufactured Products* published by the Bureau of the Census in its latest Census of Manufacturers. The provisions of this paragraph shall not apply to another corporation on the Board of Directors of which such nominee or director also serves where: (a) Kane-Miller controls, directly or indirectly through subsidiaries, more than fifty percent (50%) of the voting stock of such other corporation ("subsidiary"); or (b) Kane-Miller has been actively seeking control of such other corporation for a period of no longer than one year from the date on which there was first a common directorship. A corporation, including Kane-Miller, shall be deemed to be engaged in the sale of a product if any subsidiary is so engaged.

III

It is further ordered, That, for a period ending five years from the date of service upon it of this order, Kane-Miller shall not permit on its Board of Directors any nominee or director who fails, or is unable, truthfully to submit a written certification pursuant to Paragraph II above, or with respect to whom a reasonably diligent investigation by Kane-Miller would reveal such certification cannot truthfully be made. The prohibition contained in this paragraph shall not apply where: (a) Kane-Miller, or any corporation on the Board of Directors of which a nominee or director of Kane-Miller also serves, cease to be competitors, as defined in Paragraph II; or (b) said nominee or director ceases to serve on the Board of Directors of such other competitor corporation.

IV

It is further ordered, That Kane-Miller shall, within ninety (90) days after service upon it of this order, and annually for each of the five years thereafter, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order, including copies of those certifications provided by all current directors of Kane-Miller pursuant to Paragraph II of this order. If compliance with Paragraphs II and III of this order requires any member of Kane-Miller's Board of Directors to resign or be removed from its Board of Directors, Kane-Miller shall be allowed a reasonable period of time, but in no event longer than ninety (90) days, within which to take any legal or other steps necessary to secure compliance. Nothing in this order shall be construed to exempt Kane-Miller from compliance with the antitrust laws or the Federal Trade Commission Act: and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such statutes.

V

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

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

Decision and Order

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent to all the jurisdictional facts set forth in the complaint heretofore 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 other provisions as required by the Commission's Rules; and

The Commission having thereafter issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission, having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent, United Brands Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located at 245 Park Ave., New York, New York.

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

ORDER

I

It is ordered, That United Brands Company, a New Jersey corporation, its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its Board of Directors if such individual is or would be at the same time a director of Kane-Miller Corp., a Delaware corporation, so long as said respondent and Kane-Miller Corp., compete in the production or sale of any product.

II

It is further ordered, That respondent shall, within sixty (60) days after the service upon it of this order and annually, in each of the four years thereafter, transmit to each nominee or director a copy of the complaint and order in this proceeding together with a request that each such nominee or director certify in writing to respondent that such person does not serve on the Board of Directors of any corporation which is engaged in a business in or affecting commerce, as commerce is defined in Section 1 of the Clayton Act or Section 4 of the Federal Trade Commission Act, and in competition with respondent, in any of the following: (a) the production, processing and sale (exclusive of sales at retail to consumers) of products whose content is more than 50

percent meat, in fresh, frozen, or processed forms; (b) the sale (exclusive of sales at retail to consumers) of bananas; and (c) the production or sale of any product for which respondent had sales to unrelated purchasers in the United States in its prior fiscal year in an amount equal to five percent or more of respondent's total sales in the United States for that year, where such sales exceed $1,000,000 per year. Those products falling within category (c) of this paragraph shall be identified by respondent in a list to be prepared by it and transmitted to each such nominee or director simultaneously with the request for certification. For purposes of Paragraph I and category (c) of this Paragraph, identification of all products shall be by reference to the four-digit Code and Product Description published by the Bureau of the Census in its latest *Numerical List of Manufactured Products.* The provisions of this Paragraph shall not apply where: (i) the other corporation on whose Board of Directors such nominee or director also serves controls 50 percent or more of the voting stock of respondent ("parent"); (ii) respondent controls, directly or indirectly through subsidiaries, 50 percent or more of the voting stock of the other corporation on whose Board of Directors such nominee or director also serves ("subsidiary"); or (iii) 50 percent or more of the voting stock of the other corporation on whose Board of Directors such nominee or director also serves is held by a corporation which also holds 50 percent or more of the voting stock of respondent ("sister"). Notwithstanding the fact that a product of respondent which is within category (c) of this Paragraph and a product of the other corporation shall each be included in the same four-digit Code and Product Description, the provisions of this Paragraph shall not apply if respondent has shown to the satisfaction of the Federal Trade Commission or to any court of competent jurisdiction, in a final, non-appealable determination, that such products do not compete. A corporation, including respondent, shall be deemed to be engaged in the production or sale of a product if any parent, subsidiary or sister corporation is so engaged.

III

It is further ordered, That for a period ending five years from the date of service upon it of this order, respondent shall not permit on its Board of Directors any nominee or director who fails to submit a written certification pursuant to Paragraph II above, or who is unable to submit truthfully such written certification, or with respect to whom a reasonably diligent investigation would reveal to respondent that such nominee or director is not able truthfully to so certify.

IV

It is further ordered, That respondent shall, within ninety (90) days after service upon it of this order, and annually for each of the four years thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, including copies of those certifications provided by all current directors of respondent, pursuant to the requirements of Paragraph II of this order. If compliance with Paragraphs II and III of this order require any member of respondent's Board of Directors to resign or to be removed from the Board of Directors of respondent, or of another corporation, respondent shall be allowed a reasonable period of time, but in no event longer than ninety (90) days, within which to take any legal or other steps which are necessary to secure compliance with this order. Nothing in this order shall be construed to exempt respondent from complying with the antitrust laws or the Federal Trade Commission Act and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

V

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

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

IN THE MATTER OF

QUALITONE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9010. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Minneapolis, Minn., hearing aid manufacturer, among other things to cease misrepresenting the beneficial results of using its merchandise, the performance characteristics, efficacy and uniqueness of its products; furnishing means and/or instrumentalities of deception or misrepresentation; and failing to maintain records which are both adequate and accurate. Further, in the event a final trade regulation rule regarding hearing aids is promulgated, such rule shall supersede this order to the extent that any requirement or prohibition herein is omitted by the rule or differs from the corresponding portion of the rule.

Appearances

For the Commission: *Wallace S. Snyder* and *Cynthia L. Ingersoll.*

For the respondent: *Lee R. Marks* and *James E. Wesner, Ginsburg, Feldman & Bress,* Washington, D. C.

COMPLAINT

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

PARAGRAPH 1. Respondent Seeburg Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 767 Fifth Ave., New York, New York.

PAR. 2. Respondent, Seeburg Industries, Inc., under a recent comprehensive reorganization acquired all shares of Seeburg Corp. of Delaware, and took over its various divisions, including the Qualitone Division which manufactures and distributes hearing aids. Respondent is now, for some time last past, and as successor in interest to Seeburg Corp. of Delaware, has been, through its operating division, Qualitone, 4931 West 35th St., Minneapolis, Minnesota, at times referred to as Qualitone World Wide Hearing Service, engaged in advertising, offering for sale, sale and distribution of hearing aids which come

within the classification of "device" as the term "device" is defined in the Federal Trade Commission Act, to dealers and distributors for resale to the public.

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

PAR. 4. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by the respondent.

PAR. 5. Respondent in the course and conduct of its business for the purpose of inducing the purchase of said devices has furnished and supplied to dealers, distributors, licensees, retailers, salesmen, representatives or agents thereof, who sell said devices to the public, various types of advertising materials, including but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats and other sales aid materials.

Respondent has assisted, aided and cooperated with its dealers and distributors in the advertising of said devices.

PAR. 6. In the course and conduct of its business respondent has disseminated and does now disseminate, certain advertisements by the United States mail and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of respondent's hearing aids, and has disseminated and caused the dissemination of advertisements concerning said devices by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the representations contained in the advertisements referred to in Paragraphs Five and Six, but not all inclusive thereof, are the following:

a. It's the NEW "ELECTRETTE" featuring the famous Qualitone selector switch and the new "condenser microphone" that enables so many people to hear better* * *especially in noisy places.

b. The transistor integrated circuits and ceramic microphones used in Qualitone models are hailed as the greatest new developments to help the hard of hearing in over 40 years.

c. The "Sophisticate" features the new "Sound Selector" switch that enables you to instantly reduce undesirable sound in restaurants or any place where noise might interfere with your understanding of speech. The "Sound Selector" Switch—A great advancement in hearing aid concepts that provides "on-the-spot" user sound selection.

d. Now! There's more than ever before from Qualitone's new AVC circuit that automatically controls the amplification of loud noise and makes hearing a pleasure even in noisy places.

e. What makes the "Power Pack II" outstanding? More power than ever plus exclusive user sound-selector switch for selected hearing* * *.

f. "Discreet" by Qualitone. A development so unique that by comparison it makes other hearing aids sound unnatural and tinny.

g. Qualitone makes hearing aids for every type of hearing loss from mild to severe.

h. (N)o matter how long you have been hard of Hearing* * * no matter how severe your hearing loss* * *We invite you to try a new development we are confident can help you hear much better than ever before.

i. With* * *Hidden Ear II you will hear clearly once again church sermons, conversations of friends and loved ones, television, radio or concerts.

j. From the Crack of Thunder and the mighty roar of the ocean to the tiniest raindrop that drips from a cloud and softly caresses a windowpane* * *all are heard with a Qualitone hearing aid. YES! Every sound is either amplified or reduced* * *as each hearing loss requires.

k. If you have trouble hearing in a noisy environment, "Sound Director" may be the answer to your problem.

l. What a properly fitted hearing aid will do: Regains for you all the pleasures hearing provides: church—home—social—business.

m. If you sometimes hear but don't always understand (often a symptom of mild nerve deafness) this aid may be your answer.

n. So if sudden loud noise causes hearing problems for you, or if you hear but do not always understand, AUTOMATIC VOLUME COMPRESSION (AVC) HELPS ELIMINATE THESE PROBLEMS.

o. Hidden Ear II. If you hear but do not always understand, you owe it to yourself to investigate this new instrument.

p. Qualitone now makes hearing aids that bring to your ear the natural-like low sounds for your listening pleasure.

q. It sounds so NATURAL that you may forget you are wearing it! You won't believe your eyes or ears when you hear and see the fabulous "Discreet" by Qualitone. Listening through a hearing aid may become

as realistic and pleasant for hard of hearing folks as the sound of high fidelity radios and modern stereo* * *.

r. "Ultra Front Mike"—You will be amazed with its natural clear hearing.

s. A new development from Qualitone called "Hidden Ear" III based on the scientific combining of ceramic and electronics makes sound so natural that you may forget you are wearing a hearing aid* * *. It's like coming out [of] the Dark into the Light.

t. The solution to this puzzle is the same today as it will be in ten years. BUT this is not the case with a hearing loss— HEARING LOSS MAY BECOME MORE DIFFICULT TO SOLVE AS TIME GOES ON.

u. Hearing aids tend to retard progressive deafness and activate sound memory. Progressive loss may continue while you are waiting for the ultimate hearing aid.

v. Will a hearing aid cure deafness? No, but a properly fitted hearing aid retards the progress of deafness and offers the best substitute hearing science has developed.

PAR. 8. Through the above representations, and others of similar import and meaning but not expressly set out herein, respondent has represented, directly or by implication that:

1. Respondent merchandises a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Certain of respondent's hearing aids or component parts thereof are unique, special or exclusive in that they:

(a) are superior to all other hearing aids or component parts thereof used for hearing loss;

(b) contain or embody certain inventions, features (excluding physical appearance), concepts, or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Respondent's hearing aids will be beneficial to persons with a hearing loss, regardless of the type or extent of loss.

4. Respondent's hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in noisy or group situations.

5. Respondent's hearing aids will help those persons who hear but do not understand.

6. Respondent's hearing aids will restore natural hearing to wearers and will enable wearers of such devices to hear sounds naturally.

7. Respondent's hearing aids tend to halt or retard the progression of a hearing loss.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. The hearing aids or the component parts thereof referred to in the representations contained in Paragraph Seven, and in other advertisements, are not unique, special or exclusive in that they:

(a) are not superior to all other hearing aids or component parts thereof used for hearing loss; and

(b) do not contain or embody inventions, features (excluding physical appearance), concepts or principles not contained in other hearing aids or component parts thereof used for hearing loss.

3. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

4. Many persons with a hearing loss will not be able to consistently distinguish and understand speech sounds in noisy or group situations by using any hearing aid.

5. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by any hearing aid.

6. No hearing aid will restore natural hearing to the wearers thereof nor will it enable such persons to hear sounds naturally.

7. No hearing aid will halt or retard the progression of a hearing loss.

Therefore, the advertisements referred to in Paragraphs Five through Eight were and are misleading in material respect and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondent has represented, directly or by implication, that at the time respondent made the claims set forth in Paragraph Eight respondent had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capability or hearing quality of any hearing aid:

> Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or hearing quality of respondent's hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondent's failure to disclose said material facts in connection with each such claim for its hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondent of the aforesaid false advertisements, and the use of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and the representations contained therein were, and are, true and into the purchase of substantial quantities of respondent's devices by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of the respondent, as herein alleged, including the dissemination of false advertisements and the making of representations without a reasonable basis, as aforesaid, were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Qualitone, Inc. with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of the 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 accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Qualitone, 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 4931 West 35th St., Minneapolis, Minnesota.

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

ORDER

PART I

It is ordered, That Qualitone, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

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

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention, concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. *Provided, however*, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids or component parts thereof (a) are unique or superior to all other hearing aids used for hearing loss; or (b) embody inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aid or component parts thereof used for hearing loss unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that its hearing aids or component parts thereof (a) are unique and superior to all other hearing aids used for hearing loss, and (b) embody inventions, features, concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss; [2] the hearing aid or component part, invention, feature, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the nature of the uniqueness or superiority claim made in the advertisement, including the nature of the benefit to the consumer attributed to the invention, feature, concept or principle embodied in any such hearing aid; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(7) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(8) Respondent's hearing aids will restore natural hearing to wearers or will enable wearers of such devices to hear sounds naturally.

(9) Respondent's hearing aids will or tend to halt or retard the progression of a hearing loss.

(b) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

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

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made.

Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any

advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Qualitone, Inc., a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.

2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Qualitone, Inc., a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the private label at the principal office of the private label purchaser of respondent's hearing aid.

2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above

that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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

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

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

MAICO HEARING INSTRUMENTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9011. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Minneapolis, Minn., hearing aid manufacturer, among other things to cease misrepresenting the beneficial results of using its products; misrepresenting the performance characteristics, efficacy and uniqueness of its merchandise; furnishing means and/or instrumentalities of misrepresentation or deception; and failing to maintain adequate and accurate records. Further, in the event a final trade regulation rule regarding hearing aids is promulgated, such rule shall supersede this order to the extent that any requirement or prohibition herein is omitted by the rule or differs from the corresponding portion of the rule.

Appearances

For the Commission: *William S. Busker* and *Heidi P. Sanchez.*

For the respondent: *Thomas C. Kayser* and *Elliot S. Kaplin, Robins, Davis & Lyons,* Minneapolis, Minn.

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 Textron, Inc., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Textron, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 10 Dorrance St., Providence, Rhode Island.

PAR. 2. Respondent is now, and for some time last past has been through its operating division, Maico Hearing Instruments, 7375 Bush Lake Road, Minneapolis, Minnesota, engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes, and for some time last past has caused, its devices

when sold to be shipped from its place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondent.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said devices has furnished and supplied to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, who sell said devices to the public, various types of advertising materials, including, but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats and other sales aid materials.

Respondent has assisted, aided, provided payments to and otherwise cooperated with its dealers, distributors, licensees, retailers, salespersons, representatives, or agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of its business respondent has disseminated, and does now disseminate, certain advertisements by use of the United States mail and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation or broadcast on radio or television, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said devices, and has disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the representations contained in the advertisements referred to in Paragraphs Five and Six, but not inclusive thereof, are the following:

> With the development of exciting new hearing concepts such as directional hearing and electret microphones, MAICO hearing aids are better than ever. (Mailer)

> * * *it represents a dramatic new concept in hearing aid design, but more importantly, because of *what it does to overcome the one problem hearing aid wearers find most difficult:* HEARING CLEARLY (especially voices) IN NOISY SURROUNDINGS. (Mailer)

Now, a new hearing aid has been released after six years of development and testing, which may offer you *better hearing than you have ever known!* An exclusive new microphone used in this aid suppresses bothersome background noises, and *allows you to hear and understand voices clearly,* even in noisy rooms! (Radio)

A remarkable new hearing aid utilizing an exclusive microphone design can offer as much as 100% improvement in speech discrimination over aids with conventional microphones.

* * *The hearing aid is the new MAICO DirectionEar Mark 100, with the exclusive Linear Array Dephaser (LAD) Microphone. Longtime hearing aid wearers find it difficult to believe how much better they can hear with this unique aid.

BENEFITS TO THE WEARER: 1. Discrimination is greatly improved in noisy environments. (Print)

PAR. 8. Through the above representations, and others of similar import and meaning but not expressly set out herein, respondent has represented directly or by implication that:

1. It merchandises a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Certain of its hearing aids or component parts thereof are unique, special or exclusive in that they

(a) are superior to all other hearing aids or component parts thereof used for hearing loss; or

(b) contain or embody certain inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Respondent's hearing aids will be beneficial to persons with a hearing loss, regardless of the type or extent of loss.

4. Respondent's hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in noisy or group situations.

5. Respondent's hearing aids will help those persons who hear but do not understand.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. The hearing aids or component parts thereof, referred to in the representations contained in Paragraph Seven, and in other advertisements, are not unique, special or exclusive in that they

(a) are not superior to all other hearing aids or component parts thereof used for hearing

(b) do not contain or embody certain inventions, loss; and features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aids and/or component parts thereof used for hearing loss.

3. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

4. Many persons with hearing loss will not be able to consistently distinguish and understand speech sounds in noisy or group situations by using any hearing aid.

5. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by any hearing aid.

Therefore, the advertisements referred to in Paragraphs Five through Eight were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondent has represented, directly or by implication, that at the time that respondent made the claims set forth in Paragraph Eight, respondent had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capability or hearing quality of any hearing aid:

> Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or the hearing quality of respondent's hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements

were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondent's failure to disclose said material fact in connection with each such claim for its hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondent of the aforesaid false advertisements and the use of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were, and are, true and into the purchase of substantial quantities of respondent's devices by reason of said erroneous belief.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, and the making of representations without a reasonable basis as aforesaid, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Maico Hearing Instruments, Inc. with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of the 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 accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Maico Hearing Instruments, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 7375 Bush Lake Road, Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

PART I

It is ordered, That Maico Hearing Instruments, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

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

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention, concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. *Provided, however,* that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids or component parts thereof (a) are unique or superior to all other hearing aids used for hearing loss; or (b) embody inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aid or component parts thereof used for hearing loss unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that its hearing aids or component parts thereof (a) are unique and superior to all other hearing aids used for hearing loss, and (b) embody inventions, features, concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss; [2] the hearing aid or component part, invention, feature, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the nature of the uniqueness or superiority claim made in the advertisement, including the nature of the benefit to the consumer attributed to the invention, feature, concept or principle embodied in any such hearing aid; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(7) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(b) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or

the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

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

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made.

Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Maico Hearing Instruments, Inc., a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.

2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid

materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Maico Hearing Instruments, Inc., a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the private label at the principal office of the private label purchaser of respondent's hearing aid.

2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade

Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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

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

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

RADIOEAR CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9012. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a McMurray, Penn., hearing aid manufacturer, among other things to cease making false, deceptive and unsubstantiated claims or representations regarding the benefits, characteristics, efficacy and/or uniqueness of its products; furnishing means and/or instrumentalities of misrepresentation or deception; and failing to maintain adequate and accurate records. Further, in the event a final trade regulation rule is promulgated regarding hearing aids, such rule shall supersede this order to the extent that any requirement or prohibition herein is omitted by the rule or differs from the corresponding portion of the rule.

Appearances

For the Commission: *Wallace S. Snyder* and *Judith A. Neibrief.*

For the respondent: *Charles C. Keller, Peacock, Keller, Yoke & Day,* Washington, Pennsylvania.

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 Radioear Corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Radioear Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 375 Valley Brook Road, Canonsburg, Pennsylvania. Radioear Corporation is a subsidiary of the Esterline Corporation, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes, and for some time last past has caused, its devices when sold to be shipped from its place of business in the Commonwealth

of Pennsylvania to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondent.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said devices has furnished and supplied to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, who sell said devices to the public, various types of advertising materials, including, but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats and other sales aid materials.

Respondent has assisted, aided, provided payments to and otherwise cooperated with its dealers, distributors, licensees, retailers, salespersons, representatives, or agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of its business respondent has disseminated, and does now disseminate, certain advertisements by use of the United States mail and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said devices, and has disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the representations contained in the advertisements referred to in Paragraphs Five and Six, but not inclusive thereof, are the following:

(a) Radioear engineers, utilizing the latest scientific advances, have been able to combine more significant features than ever thought possible in a tiny, lightweight eyeglass hearing aid.

(b) Never before in the 41-year history of Radioear have so many new and extraordinary features been combined in an eyeglass hearing instrument.

(c) Newest Radioear development uses SELECTIVE AMPLIFICATION to make speech sounds more understandable!

(d) A NEW HEARING AID WITH DIRECTIONAL HEARING AND AUTOMATIC VOLUME CONTROL* * *It's a whole new world of hearing.

(e) * * *Radioear is heralding the Radioear 980 as a revolutionary development in hearing aids* * *Now Radioear makes it possible for many of those severely deafened to hear again* * *with the introduction of a bold, new concept in super-powered hearing aids* * * Radioear engineers* * *in the Radioear 890* * *add ideas that are so completely new they set the Radioear 980 apart from every other hearing aid manufactured today.

(f) Radioear's got *the* hearing aid! It's Radioear 980 * * *a special hearing aid for the severely deafened * * *Never before has so much good hearing been available in a wearable hearing aid.

(g) Only Radioear Offers All These Superb Features In A Behind-The-Ear Hearing Aid.

(h) The Radioear 980 will be the pacesetter of the Hearing Aid Industry for many years to come* * * Expect it to be the finest hearing aid you have ever seen or heard* * *The RADIOEAR 980 Is The Ultimate Hearing Aid For Children With Severe Hearing Problems!

(i) Let us tell you about Radioear's exclusive features.

(j) Through the years, Radioear engineers have continued to lead the industry in hearing aid research and design. . .Their dedicated research, plus a stringent program of quality control in manufacturing, have earned for Radioear the reputation as the *"world's finest hearing aid!"*

(k) Most people experience some degree of hearing loss as they grow older. But you don't have to settle for it.

(l) Radioear, world's oldest maker of electronic hearing aids, offers you aids of every type for every degree of hearing loss.

(m) A type of hearing aid for every purpose.

(n) Radioear makes a full line of quality hearing aids for all types of hearing losses.

(o) Radioear is the brand name of top quality hearing aids which do offer *complete help.*

(p) Get back in the swing of things—enjoying everything you really like to do: dancing; playing bridge; hunting; going to the theatre; attending a lodge meeting; listening to or singing a favorite song.

(q) Tired of trying to concentrate on a particular conversation in a crowded room? Annoyed with noisy people behind you in a movie?* * *Try the Radioear 1030. It's a whole new world of hearing.

(r) Radioear 1000 will help many with the following problems* * *Group conversation is confusing.

(s) Thousands of persons who hear but not understand will be helped by this remarkable hearing aid.

(t) RADIOEAR 1000 WILL HELP MANY WITH THE FOLLOWING PROBLEMS Hear but do not understand.

(u) New hearing realism for a wide range of hearing losses* * *

(v) * * *(S)uperb hearing realism for a wide range of hearing losses* * *

(w) NEW TONAL REALISM — highly developed electronic circuitry provides full-fidelity performance.

PAR. 8. Through the above representations, and others of similar import and meaning but not expressly set out herein, respondent has represented directly or by implication that:

1. Respondent merchandises a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Certain of its hearing aids or component parts thereof are unique, special or exclusive in that they

(a) are superior to all other hearing aids or component parts thereof used for hearing loss; or

(b) contain or embody certain inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Respondent's hearing aids will be beneficial to persons with a hearing loss, regardless of the type or extent of loss.

4. Respondent's hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in noisy or group situations.

5. Respondent's hearing aids will help those persons who hear but do not understand.

6. Respondent's hearing aids will restore natural hearing to wearers and will enable wearers of such devices to hear sounds naturally.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. The hearing aids or component parts thereof, referred to in the representations contained in Paragraph Seven, and in other advertisements, are not unique, special or exclusive in that they

(a) are not superior to all other hearing aids or component parts thereof used for hearing loss; and

(b) do not contain or embody certain inventions, features (excluding physical appearance), concepts or principles not contained or embodied

in any other hearing aids or component parts thereof used for hearing loss.

3. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

4. Many persons with hearing loss will not be able to consistently distinguish and understand speech sounds in noisy or group situations by using any hearing aid.

5. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by any hearing aid.

6. No hearing aid will restore natural hearing to the wearers thereof nor will it enable such persons to hear sounds naturally.

Therefore, the advertisements referred to in Paragraphs Five through Eight were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondent has represented, directly or by implication, that at the time that respondent made the claims set forth in Paragraph Eight, respondent had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capability or hearing quality of any hearing aid:

> Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or the hearing quality of respondent's hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondent's failure to disclose said

material fact in connection with each such claim for its hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondent of the aforesaid false advertisements and the use of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were, and are, true and into the purchase of substantial quantities of respondent's devices by reason of said erroneous belief.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, and the making of representations without a reasonable basis as aforesaid, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Radioear Corporation with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of the 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 accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Radioear Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 375 Valley Brook Road, McMurray, Pennsylvania.

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

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ORDER

PART I

It is ordered, That Radioear Corporation, a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

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

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention, concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. *Provided, however*, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a

hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids or component parts thereof (a) are unique or superior to all other hearing aids used for hearing loss; or (b) embody inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aid or component parts thereof used for hearing loss unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that its hearing aids or component parts thereof (a) are unique and superior to all other hearing aids used for hearing loss, and (b) embody inventions, features, concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss; [2] the hearing aid or component part, invention, feature, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the nature of the uniqueness or superiority claim made in the advertisement, including the nature of the benefit to the consumer attributed to the invention, feature, concept or principle embodied in any such hearing aid; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(7) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(8) Respondent's hearing aids will restore natural hearing to wearers or will enable wearers of such devices to hear sounds naturally.

(b) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing

aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

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

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made.

Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Radioear Corporation, a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.

2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which

contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Radioear Corporation, a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the private label at the principal office of the private label purchaser of respondent's hearing aid.

2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order,

a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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

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

Commissioner Dole did not participate by reason of absence.