

IN THE MATTER OF  
MASTIC CORPORATION

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

*Docket C-3086. Complaint, April 12, 1982—Final Order, April 12, 1982*

This consent order requires Mastic Corporation, a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Mastic Corporation is required to provide its distributors and retailers with a copy of the order together with a letter explaining its provisions.

*Appearances*

For the Commission: *Steven H. Meyer and Michael Dershowitz.*

For the respondent: *Daniel D. Nayer, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Mastic Corporation, a corporation, hereinafter sometimes referred to 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 public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mastic is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 131 South Taylor St., South Bend, Indiana.

PAR. 2. Respondent is now, and for some time past, has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of residential vinyl siding products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time past has caused, its residential vinyl siding products, when sold, to be shipped from its manufacturing plants in South Bend, Indiana and Stuarts Draft, Virginia to its distributors and retailers in various States of the United States. For the purpose

of inducing the purchase of its residential vinyl siding products by the consuming public, respondent disseminates and causes the dissemination of, and for some time past has disseminated and caused the dissemination of certain advertisements and promotional materials through the use of the United States mail. Accordingly, respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of said advertisements and other promotional materials, respondent has made statements with regard to its vinyl siding products. Among these are statements that respondent's vinyl siding:

Conserves Energy

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Lowers Fuel Bills

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... is a Non-conductor of heat or cold

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... is a 24.8% better insulator than aluminum

\*\*\*

... helps to stop air infiltration

PAR. 5. By and through the use of statements set forth in Paragraph Four, respondent has represented and is now representing directly or by implication, that:

- a. vinyl siding, by itself, significantly conserves energy;
- b. vinyl siding, by itself, significantly lowers fuel bills;
- c. vinyl siding, by itself, significantly reduces heat loss through the exterior walls of a home;
- d. vinyl siding does not conduct heat or cold;
- e. vinyl siding is superior to aluminum siding because it significantly exceeds aluminum siding in insulation value;
- f. vinyl siding, in all cases, significantly reduces air infiltration into and out of a home.

PAR. 6. In truth and in fact, contrary to respondent's representations set forth in Paragraph Five:

- a. vinyl siding, by itself, does not significantly conserve energy;
- b. vinyl siding, by itself, does not significantly lower fuel bills;

c. vinyl siding, by itself, does not significantly reduce heat loss through the exterior walls of a home;

d. vinyl siding, like all materials, conducts heat; indeed, because it is a very thin material, vinyl siding has a high rate of conductance.

e. vinyl siding does not exceed aluminum siding in insulation value; there is little, if any, difference in the insulation value of vinyl and aluminum siding.

f. vinyl siding does not, in all cases, significantly reduce air infiltration into and out of a home; indeed, in many cases vinyl siding has little, if any, effect on air infiltration.

Therefore, said advertisements and promotional materials were, and are false, deceptive, misleading or unfair.

PAR. 7. At the time respondent made the statements and representations alleged in Paragraphs Four and Five, it did not possess and rely upon a reasonable basis for such representations. Therefore, the statements and representations set forth and alleged in Paragraphs Four and Five were and are unfair, deceptive, or misleading.

PAR. 8. By and through the use of the aforementioned advertisements and promotional materials, respondent has represented and is now representing, directly or by implication, that it had a reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. In truth and in fact, respondent had no reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. Therefore, said advertisements and promotional materials were and are unfair, deceptive or misleading.

PAR. 9. The use by respondent of the aforesaid false, misleading, unfair or deceptive advertising and promotional materials, and the placement in the hands of its distributors and retailers of the means and instrumentalities by and through which others have used the aforesaid false, misleading, unfair or deceptive advertisements and promotional materials have had, and now have, the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondent's vinyl siding products by reason of said erroneous and mistaken belief.

PAR. 10. The 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 and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal

Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### 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 of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 has 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 Mastic Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 131 South Taylor St., in the City of South Bend, State of Indiana.
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:

*Advertisement* means any illustration, depiction, written or oral

statement, or other representation, whether the same appears in a television or radio broadcast, newspaper or label, brochure, leaflet, circular, mailer, book insert, journal, catalog, sales promotion material, other periodical literature, billboard, public transit card, point of purchase display, or in any other media.

*Energy related claim* means any general or specific representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, insulating value, air infiltration, conductance of heat, or heat gain or loss.

*Vinyl siding product* means any vinyl siding product made from vinyl and used for residential purposes, and includes siding which is directly backed with material such as backerboard or drop-in panels. For purposes of this order, *vinyl siding product* does not include *siding systems*, which are a combination of vinyl siding and any other product(s) which contain *insulation* as that word is defined by the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, 16 CFR Part 460 (1980).

#### PART I

*It is ordered*, That respondent Mastic Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any vinyl siding product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, causing to be disseminated, or paying in whole or in part for any advertisement which contains an energy related claim.

#### PART II

*It is further ordered*, That for a period of five years following the date of service of this Order, respondent deliver a copy of this Order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, printing or dissemination of any advertisement promoting respondent's vinyl siding products; and that respondent obtain a signed statement acknowledging receipt of the order from each said person or entity.

#### PART III

*It is further ordered*, That respondent shall:

1. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that has been a distributor of respondent's vinyl siding products during the year prior to the date of service of this order, and to every person or firm that has been a retailer of respondent's vinyl siding products that respondent can identify from the warranty registration cards which, between July, 1980 and the date of service of this order, were both issued by and returned to respondent:

- a. a copy of this order, and
- b. a cover letter which informs the recipient in plain and readily understood language that Mastic has agreed with the Federal Trade Commission not to make energy related claims for its vinyl siding products, that the recipient should make no energy related claims for Mastic's vinyl siding products in the future, and that the recipient should stop using any Mastic promotional material which contains any energy related claims.

2. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraph 1 of PART III of this order.

#### PART IV

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

#### PART V

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

## IN THE MATTER OF

## BRUNSWICK CORPORATION, ET AL.

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

*Docket 9028. Final Order, Aug. 14, 1980—Modifying Order, April 29, 1982*

This order modifies the Commission's final order issued on August 14, 1980, 96 F.T.C. 151, by adding Paragraphs IX and X to the order, in accordance with the decision and judgment of the Eighth Circuit Court of Appeals. The new paragraphs: (1) limit Yamaha's liability in this matter solely to violations of Section 5 of the Federal Trade Commission Act; and (2) insures that nothing in the order prevents respondents from imposing upon themselves, their dealers and distributors, vertical restraints in connection with the sale by them for resale in the U.S. of outboard motors.

## MODIFIED ORDER TO CEASE AND DESIST

The Commission having issued a final cease and desist order herein on August 14, 1980, and such order having been modified and affirmed by the United States Court of Appeals for the Eighth Circuit, and the Supreme Court having denied the petition for certiorari filed by respondents Brunswick Corporation and Mariner Corp.:

Now, therefore, *it is ordered*, that the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

For the purposes of this Order:

a) *Brunswick* shall mean the Brunswick Corporation, together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations (including Mariner Corp.), and corporations controlled by Brunswick Corporation; and all successors to Brunswick Corporation and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Brunswick Corporation.

b) *Yamaha* shall mean Yamaha Motor Co., Ltd., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Yamaha Motor Co., Ltd.; and all successors to Yamaha Motor Co., Ltd. and their domestic and foreign subsidiaries, affiliates, joint ventures

and related corporations; and all corporations controlled by the successors of Yamaha Motor Co., Ltd.

c) *Mariner* shall mean Mariner Corp., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Mariner Corp.; and all successors to Mariner Corp. and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Mariner Corp.

### I.

*It is ordered,* That within 90 days of the date this Order becomes final, Brunswick and Mariner shall sell to Yamaha, and Yamaha shall buy from Brunswick and Mariner, all capital stock, bonds, debentures, and other securities and other interests held by Brunswick and Mariner in Sanshin Kogyo Co., Ltd. ("Sanshin"). The purchase price shall be equal in dollars to the value of the net tangible assets per share, computed and adjusted to the last day of the six month term immediately preceding the date of the sale.

### II.

*It is further ordered,* That, on or before 90 days from the date this Order becomes final, Brunswick, Yamaha, and Mariner shall rescind in all respects the Joint Venture Agreement, and the agreements attached thereto, entered into on November 21, 1972, and all agreements modifying the Joint Venture Agreement and the agreements attached thereto, shall consider them null and void, and shall cease and desist from observing or enforcing the terms of said agreements.

### III.

*It is further ordered,* That from the date this Order becomes final, Brunswick and Mariner shall cease any and all representation on the board of directors of Sanshin, cease and desist from taking any steps to nominate, seat, or admit any representatives of Brunswick and Mariner to the board of directors of Sanshin, and cease and desist from exercising any of the rights of a shareholder of Sanshin except the right to receive dividends.

## IV.

*It is further ordered,* That from the date this Order becomes final, neither Brunswick nor Mariner shall enter into, continue to be a party to, or enforce any agreement which in whole or in part prevents a manufacturer, seller, or distributor of outboard motors from manufacturing, selling, or distributing such motors in the United States, its territories or possessions.

## V.

*It is further ordered,* That from the date this Order becomes final, Yamaha shall not enter into, continue to be a party to, or observe any agreement which in whole or in part prevents Yamaha from manufacturing, selling, or distributing outboard motors in the United States, its territories or possessions.

## VI.

*It is further ordered,* That Brunswick, Yamaha, and Mariner shall, for a period of three years from the date this Order becomes final, cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, all or any part of the stock or share capital of any concern, corporate or noncorporate, engaged in the production, distribution or sale of outboard motors in or for the United States, or capital assets pertaining to such production, distribution or sale of such motors in or for the United States.

## VII.

*It is further ordered,* That Brunswick, Yamaha, and Mariner notify the Federal Trade Commission at least 30 days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in the corporation which may affect compliance obligations arising out of this Order.

## VIII.

*It is further ordered,* That Brunswick, Yamaha, and Mariner shall within 120 days of the date this Order becomes final, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Brunswick, Yamaha,

and Mariner each intends to comply or has complied with this Order. Brunswick, Yamaha, and Mariner shall submit such other information as may from time to time be requested by the Commission.

IX.

Nothing in this Order or in the opinions of the Commission in this case shall be construed as a finding or conclusion that Yamaha has violated Section 7 of the Clayton Act. All findings and relief against Yamaha are based solely on Section 5 of the Federal Trade Commission Act.

X.

Nothing in this Order, including in particular Paragraphs IV or V hereof, shall prevent either Brunswick, Mariner, or Yamaha, respectively, from imposing upon itself, its dealers, or its distributors, ancillary vertical restraints in connection with the sale by it for resale in the United States of outboard motors.

IN THE MATTER OF  
VINYL IMPROVEMENT PRODUCTS COMPANY  
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3087. Complaint, April 30, 1982—Decision, April 30, 1982*

This consent order requires Vinyl Improvement Products Company (VIPCO), a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy-related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Further, VIPCO must mail to each business entity which has sold or distributed its products during the previous year a letter which advises that vinyl siding by itself does not save energy.

*Appearances*

For the Commission: *Steven H. Meyer and Michael Dershowitz.*

For the respondent: *Joseph J. Lyman, Lyman, Kyhos & Rales,*  
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Vinyl Improvement Products Company, a corporation, hereinafter sometimes referred to 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 public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Vinyl Improvement Products Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1441 Universal Drive, Columbus, Ohio.

PAR. 2. Respondent is now, and for some time past, has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of residential vinyl siding products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time has caused, its residential vinyl siding products, when sold, to be shipped from its manufacturing plant in Columbus, Ohio to its distributors and retailers in various States of

the United States. For the purpose of inducing the purchase of its residential vinyl siding products by the consuming public, respondent disseminates and causes the dissemination of, and for some time has disseminated and caused the dissemination of certain advertisements and promotional materials through the use of the United States mail. Accordingly, respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of said advertisements and other promotional materials, respondent has made statements with regard to its vinyl siding products. Among these are the following statements:

Conserve energy

\* \* \* \* \*

Lowers your fuel bills summer and winter

Enjoy a significant savings on heating costs . . .

\* \* \* \* \*

Vinyl does not retain heat or cold . . . This resistance to heat and cold makes vinyl a superior Energy Saving material for insulation.

. . . can really help protect the home against expensive energy loss. Because it is solid vinyl, which does not readily transfer heat or cold, it helps keep out winter's freezing and summer's sweltering temperatures.

\* \* \* \* \*

. . . insulates 1000 times better than ordinary aluminum siding.

Better insulation value than traditional siding such as aluminum or steel.

PAR. 5. By and through the use of statements set forth in Paragraph Four, respondent has represented and is now representing directly or by implication, that:

- a. vinyl siding, by itself, significantly conserves energy;
- b. vinyl siding, by itself, affords significant fuel bill savings;
- c. vinyl siding, by itself, is an effective insulating material because it is heat resistant;
- d. vinyl siding is superior to aluminum siding because it significantly exceeds aluminum siding in insulation value;

PAR. 6. In truth and in fact, contrary to respondent's representations set forth in Paragraph Five:

- a. vinyl siding, by itself, does not significantly conserve energy;
- b. vinyl siding, by itself, does not afford significant fuel bill savings;
- c. vinyl siding, by itself, is not an effective insulating material and is not heat resistant; indeed, because it is a very thin material, vinyl siding conducts heat at a high rate.
- d. vinyl siding does not exceed aluminum siding in insulation value; indeed, there is little, if any, difference in the insulation value of vinyl and aluminum siding.

Therefore, said advertisements and promotional materials were, and are false, deceptive, misleading or unfair.

PAR. 7. At the time respondent made the statements and representations alleged in Paragraphs Four and Five, it did not possess and rely upon a reasonable basis for such representations. Therefore, the statements and representations set forth and alleged in Paragraphs Four and Five were and are unfair, deceptive, or misleading.

PAR. 8. By and through the use of the aforementioned advertisements and promotional materials, respondent has represented and is now representing, directly or by implication, that it had a reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. In truth and in fact, respondent had no reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. Therefore, said advertisements and promotional materials were and are unfair, deceptive or misleading.

PAR. 9. The use by respondent of the aforesaid false, misleading, unfair or deceptive advertising and promotional materials, and the placement in the hands of its distributors and retailers of the means and instrumentalities by and through which others have used the aforesaid false, misleading, unfair or deceptive advertisements and promotional materials have had, and now have, the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondent's vinyl siding products by reason of said erroneous and mistaken belief.

PAR. 10. The 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 and unfair and deceptive acts and practices

in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### 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 of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 has 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 Vinyl Improvement Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1441 Universal Drive, in the City of Columbus, State of Ohio.

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:

*Advertisement* means any illustration, depiction, written or oral statement, or other representation, whether the same appears in a television or radio broadcast, newspaper or label, brochure, leaflet, circular, mailer, book insert, journal, catalog, sales promotion material, other periodical literature, billboard, public transit card, point of purchase display, or in any other media.

*Energy-related claim* means any general or specific representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, insulating value, air infiltration, conductance of heat, or heat gain or loss.

*Vinyl siding product* means any vinyl siding product made from vinyl and used for residential purposes, and includes siding which is directly backed with material such as backerboard or drop-in panels. For purposes of this order, "vinyl siding product" does not include "siding systems," which are a combination of vinyl siding and any other product(s) which contain "insulation" as that word is defined by the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, 16 CFR 460 (1980).

#### PART I

*It is ordered,* That respondent Vinyl Improvement Products Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any vinyl siding product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, causing to be disseminated, or paying in whole or in part for any advertisement which contains an energy-related claim.

#### PART II

*It is further ordered,* That respondent forthwith deliver a copy of this order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, printing or dissemination of any advertisement promoting respondent's vinyl siding products; and that respondent obtain a signed statement acknowledging receipt of the order from each said person or entity.

## PART III

*It is further ordered,* That respondent shall:

1. within thirty (30) days from the date of service of this order, send on Vinyl Improvement Products Company stationery, via first class mail, the letter attached hereto as Exhibit A, to each business entity which respondent's records show has been engaged in the offering for sale, sale or distribution of respondent's vinyl siding products directly or indirectly to the consuming public within one year prior to the date of service of this order; and
2. supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraph 1 of PART III of this order.

## PART IV

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

## PART V

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

## EXHIBIT A

- ON VIPCO STATIONERY -

Dear Distributor or Retailer:

Some of the promotional materials which have been used for vinyl siding have contained claims that vinyl siding can produce energy savings. Because vinyl siding, by itself, does not save energy, we no longer make such claims. This is to advise you that you should stop representing that vinyl siding, itself, is an energy savings material.

You should note, however, that this applies only to energy savings claims made for vinyl siding alone, and not to advertising for insulation products such as Barrier Board. The labeling and advertising of insulation is covered by the FTC Home

Insulation Rule. Please remember that the Rule requires that the Fact Sheets we have distributed for Barrier Board must be given to the ultimate consumer whenever this product is sold. If you have any questions about the materials we have provided, or advertisements that you have developed, we would be pleased to advise you on such matters.

Sincerely,

VINYL IMPROVEMENT PRODUCTS COMPANY  
(VIPCO)

Complaint

99 F.T.C.

IN THE MATTER OF  
GENERAL ELECTRIC COMPANY

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

*Docket C-3088. Complaint, May 4, 1982—Decision, May 4, 1982*

This consent order requires a Fairfield, Conn. diversified, industrial company, among other things, to divest its stock in Applicon, a major producer of stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems, under a two-part divestiture plan to be completed by March 31, 1982. Pending divestiture, the order prohibits GE from exerting any influence over Applicon's operations; voting its stock in a manner which would be contrary to that in which it votes all other shares; and obtaining, from Applicon, confidential information of any kind. Additionally, for a five-year period, any GE employee who was in any way affiliated with Applicon is barred from serving in any position in Calma Company, a Sunnyvale, Calif. subsidiary of United Telecommunications, Inc., including its board of directors; prohibited from disclosing confidential information received during their tenure with Applicon, and barred from intervening in any of Calma's business operations. GE is also prevented from discriminating against Applicon, when purchasing CAD/CAM systems and products and restricted, for a ten-year period, from acquiring any interest in any firm engaged in the manufacture and sale of CAD/CAM products without prior Commission approval.

*Appearances*

For the Commission: *George S. Cary, Daniel J. Yakoubian and Donna Bowling.*

For the respondent: *Joseph Handors*, in-house counsel, Fairfield, Conn.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, subject to the jurisdiction of the Commission, has acquired Calma Company ("Calma"), a wholly-owned subsidiary of United Telecommunications, Inc., in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

## I. DEFINITIONS

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

(a) *Respondent* shall mean General Electric Company, a corporation, and its subsidiaries, affiliates, successors, and assigns; and

(b) *Stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems* shall mean computer hardware and software products consisting of: (i) a cathode ray tube display; (ii) various input devices including a standard alphanumeric keyboard, a programmable function keyboard, and an electronic pen and tablet; (iii) various output devices including plotters; (iv) a central processing unit consisting of one or more 16 or 32 bit minicomputers; and, (v) various operating systems and applications software packages.

## II. RESPONDENT

2. Respondent is a corporation organized and doing business under and by virtue of the laws of the State of New York with its executive offices at 3135 Easton Turnpike, Fairfield, Connecticut.

3. Respondent is a diversified, industrial company with operations in consumer products and services, industrial products and components, technical systems and materials, power systems, coal mining, and industrial electronics. In 1979, Respondent had total assets of \$16.6 billion and total sales of \$22.5 billion.

4. At all times relevant herein, Respondent has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

## III. CALMA COMPANY

5. At the time of the acquisition, Calma was a corporation organized and doing business under and by virtue of the laws of the State of California, with its principal executive offices at 527 Lakeside Drive, Sunnyvale, California.

6. Calma is engaged in the production and servicing of CAD/CAM systems. In 1979 Calma had U.S. sales of approximately \$21.0 million and was the third largest U.S. producer of CAD/CAM systems.

7. At all times relevant herein, Calma has been and is now

engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

#### IV. APPLICON INCORPORATED

8. Applicon is a corporation organized and doing business under and by virtue of the laws of the State of Massachusetts, with its principal executive offices at 32 Second Ave., Burlington, Massachusetts.

9. Applicon is engaged in the production and servicing of CAD/CAM systems. In 1980, its total assets were \$28.8 million and its total U.S. sales were approximately \$37.0 million. In 1980, Applicon was the second largest U.S. producer of CAD/CAM systems.

10. From approximately June 1, 1971, Respondent has been and is now the largest single holder of common stock in Applicon.

11. From approximately June 1, 1971, Respondent has had and now has substantial opportunities to influence the business operations of Applicon.

12. At all times relevant herein, Applicon has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

#### V. ACQUISITION

13. On December 5, 1980, General Electric and United Telecommunications entered into an agreement under which Respondent agreed to purchase all the outstanding shares of Calma, for \$100 million plus additional incentive payments not to exceed \$70 million, which are contingent upon cumulative sales of Calma during the 4-year period of January 1, 1981 through December 31, 1984.

#### VI. TRADE AND COMMERCE

14. The relevant line of commerce in which to evaluate the effects of GE's acquisition of Calma is CAD/CAM systems and submarkets thereof, and the relevant section of the country is the United States as a whole.

15. Sales of CAD/CAM systems in the United States are substantial, amounting to an estimated \$213 million in 1979.

16. Applicon and Calma are and have been for many years substantial and actual competitors in the manufacture and sale of CAD/CAM systems.

17. In the year 1979 Applicon had sales of CAD/CAM systems in the United States of approximately \$37.0 million accounting for approximately 17.3% of total U.S. sales. Calma had sales of CAD/CAM systems in the United States of approximately \$21.0 million in 1979 accounting for approximately 9.8% of total U.S. sales.

18. Concentration in the manufacture and sale of CAD/CAM systems is high. In 1979, the top four firms accounted for approximately 69.3% and the top six firms approximately 83.8% of U.S. sales of CAD/CAM systems.

19. On a *pro-forma* basis, the acquisition of Calma increased the 1979 four-firm concentration from approximately 69.3% to approximately 78.2% and reduced the number of substantial competitors to five from six.

20. Barriers to entry into the manufacture and sale of CAD/CAM systems are substantial.

#### VII. EFFECTS OF THE ACQUISITION

21. The effect of the acquisition of Calma by Respondent may be substantially to lessen competition and to create a monopoly in the manufacture and sale of CAD/CAM systems in the United States in the following ways, among others:

- (a) substantial actual and potential competition between Applicon and Calma and other firms in the manufacture and sale of CAD/CAM systems has been substantially lessened;
- (b) already high concentration in the manufacture and sale of CAD/CAM systems has been increased; and
- (c) the likelihood of eventual deconcentration may be lessened.

#### VIII. THE VIOLATION CHARGED

22. The aforesaid acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the acquisition of Calma Company (hereinafter "Calma"), by

General Electric Company (hereinafter "GE"), and GE having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge GE with violations of the Federal Trade Commission Act and the Clayton Act; and

GE, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by GE of all the jurisdictional facts set forth in the aforesaid draft of complaint and the relevant line of commerce, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by GE 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 GE has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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. GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with executive offices located at 3135 Easton Turnpike, Fairfield, Connecticut.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of GE, and the proceeding is in the public interest.

#### ORDER

##### I.

*It is ordered,* That for the purposes of this order the following definitions shall apply:

1. *GE* means General Electric Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices at 3135 Easton Turnpike, Fairfield, Connecticut, as well as its directors, officers, employees, agents, its divisions, subsidiaries, controlled affiliates, successors,

assigns, and the directors, officers, employees, or agents of GE's divisions, subsidiaries, affiliates, successors, or assigns.

2. *Calma* means Calma Company, a wholly-owned subsidiary of United Telecommunications, Inc., and a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal offices at 527 Lakeside Drive, Sunnyvale, California, as well as its directors, officers, employees, agents, its divisions, subsidiaries, successors, assigns, and the directors, officers, employees, or agents of Calma's parents, divisions, subsidiaries, affiliates, successors, or assigns.

3. *Applicon* means Applicon, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal offices at 32 Second Ave., Burlington, Massachusetts, as well as its directors, officers, employees, agents, its divisions, subsidiaries, successors, assigns, and the directors, officers, employees, or agents of Applicon's divisions, subsidiaries, affiliates, successors, or assigns.

4. *Eligible Person* means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association, other business or legal entity, or any combination thereof: (i) acquiring an amount of Applicon's stock that will not result in its ownership or control, directly or indirectly, of 250,000 or more shares of Applicon common stock; or (ii) acquiring Applicon stock on an established stock exchange (other than through a privately negotiated sale which is "crossed" on an exchange) or through a public offering; or (iii) acting as an underwriter for the purpose of reselling such shares pursuant to a secondary public offering.

5. *Initial Divestiture Period* shall mean the period through and including December 31, 1981.

6. *Final Divestiture Period* shall mean the period from the end of the Initial Divestiture Period through and including March 31, 1982.

7. *Documents* means all writings of every kind including, but not limited to, books, records, statements, minutes, reports, studies, memoranda, correspondence, agreements, print-outs, telegrams, diary entries, pamphlets, notes, charts, tabulations, releases, and purchase orders (including any notes, attachments, riders, modifications, etc.) in the possession, custody, or control of GE. The term *documents* also includes voice recordings and reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody, or control of the company. The term *documents* further

includes data compilations in machine readable form used in data processing, together with the programming instructions and other written material necessary to understand or use such data compilations.

8. *Relating to* means in whole or in part constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

9. *CAD/CAM product* means any stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing system.

## II.

*It is further ordered, That:*

1. GE shall divest absolutely during the Initial Divestiture Period to Eligible Persons at least two-thirds of the total number of shares of stock in Applicon held by GE either through a secondary public offering, the costs of which are to be borne by GE, through private placement, or according to the provisions of Securities and Exchange Commission Rule 144, 17 C.F.R. 230.144 (1980).

2. GE shall divest absolutely during the Final Divestiture Period, through private placements to Eligible Persons, all the remaining shares of stock in Applicon held by GE, with the exception that no more than 100,000 of such shares may be divested according to the provisions of Securities and Exchange Commission Rule 144, 17 C.F.R. 230.144 (1980).

## III.

*It is further ordered, That* pending the divestiture required under Paragraph II of this order:

1. GE shall not, directly or indirectly, exert any control over or influence or interfere with any of the business decisions, operations or policies of Applicon.

2. No GE officer, employee, representative or agent shall serve in any Applicon position or on Applicon's Board of Directors.

3. GE shall cause its shares of stock in Applicon to be voted *pro-rata* according to the manner in which all other outstanding shares of common stock in Applicon are voted.

4. GE shall not require Applicon to make available or communicate, and shall not seek to obtain or exploit, directly or indirectly, any of Applicon's trade secrets, proprietary or other confidential

business information of any kind, except in the ordinary course of GE's relationship with Applicon in its capacity as a licensor or licensee, lessor or lessee, purchaser or seller of any product, and except as such information may be required under applicable law to be disclosed in selling or disposing of Applicon stock.

#### IV.

*It is further ordered, That:*

1. GE shall return to Applicon forthwith upon issuance of this order all non-public documents containing trade secrets or proprietary or other confidential business information received from Applicon:

(a) which were obtained by an officer or employee of GE during such officer or employee's tenure as a director of Applicon;

(b) which were obtained by an officer or employee of GE in connection with discussions with Applicon regarding a possible joint venture;

(c) which, regardless of how obtained, (unless independently obtained by Calma prior to its acquisition by GE) disclose the functions, applications, design or features of any new Applicon product or enhancement to any existing product and the timing of the introduction of any new Applicon product or enhancement to any existing product (except to the extent disclosed in connection with the use or prospective use of Applicon products by GE); Applicon's actual or estimated costs or profit margins; Applicon's research and development plans, projects or expenditures; Applicon's business plans; or any Applicon decision to purchase or produce any component of any existing or new product;

and shall destroy all copies of such documents and all other documents containing Applicon trade secrets or proprietary or other confidential business information, which information was received in the manner described in 1(a) or 1(b) or is of the type described in 1(c).

2. For a period of five years after ceasing to be a director of Applicon no officer or employee of GE who obtained trade secrets, proprietary or confidential information or documents from Applicon during such officer or employee's tenure as a director of Applicon shall:

(a) disclose such information (including to other GE officers or employees);

- (b) exert any control over or influence or interfere in any way with the business decisions or operations of Calma;
- (c) cause Calma, directly or indirectly, to adopt policies preferred, suggested, or dictated by such director;
- (d) cause Calma to change its existing policies or methods of operations;
- (e) serve in any Calma position or on Calma's Board of Directors or in any GE position with responsibility for Calma; or
- (f) confer, advise, or consult with regard to Calma.

3. Officers and employees of GE who obtained Applicon trade secrets, proprietary, or other confidential business information or documents from any officer or employee of GE who obtained such information or documents during his tenure as a director of Applicon shall keep such information or documents confidential and shall not disclose (including to other GE officers or employees) or make use of such information or documents for five years from the final date of the director's term in office.

4. GE and each of its officers and employees shall keep confidential and not disclose (including to other GE officers or employees) any trade secrets or proprietary or other confidential business information obtained from Applicon during the course of discussions with Applicon regarding a possible joint venture and shall make no use of such information for a period of five years from the date of receipt of the information.

5. Paragraphs IV.3 and IV.4 shall not apply to information which appears in issued patents or printed publications independently available to GE, or which GE can show by written records is in GE's possession through channels independent of Applicon or was independently developed by GE officers or employees without use of information subject to paragraph IV of this order.

6. GE shall forthwith distribute a copy of this order to each of its operating divisions, and to present or future personnel, agents, or representatives having responsibilities relating to the subject matter of paragraphs IV.1 through IV.6, and shall secure from each such person a signed statement acknowledging receipt of such a copy. GE employees subject to paragraphs IV.2, IV.3 and IV.4 shall execute affidavits acknowledging receipt of this order.

## V.

*It is further ordered, That:*

1. For a period of two years following the issuance of this order,

GE shall not adopt, promote, foster, permit, or condone, either formally or informally, any policy with regard to the purchase of any CAD/CAM product which discriminates against Applicon on any basis other than the relative merits of any such product in the application for which it is being purchased, and GE shall, in connection with the purchase of any CAD/CAM product, make its purchase decision based solely on sound business practice which requires using the best sources of supply of products that will provide the greatest total value; that is the best evaluated combination of quality, price, delivery, service and other elements of value.

2. GE shall not enforce its statement of Policy No. 20.11, issued December 7, 1966, entitled "Company Use of General Electric Products," or any amendments to such policy, to the extent that such policy or amendments thereto conflict with the mandate set out in paragraph V.1 of this order.

3. GE shall forthwith and semiannually during the 2-year period following issuance of this order, distribute a copy of this order to each of its officers and employees who are responsible for the purchase of any CAD/CAM product.

#### VI.

*It is further ordered,* That periodically, as the Commission shall require during the five years subsequent to the issuance of this order, GE shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which GE intends to comply or has complied with this order.

#### VII.

*It is further ordered,* That GE notify the Commission at least thirty (30) days prior to any proposed change in GE 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 effect compliance obligations arising out of this order.

#### VIII.

*It is further ordered,* That, for a period of ten years from the date of issuance of this order, GE, its parents, divisions, subsidiaries, affiliates, successors or assigns shall not, directly or indirectly, acquire any stock, share capital or equity interest in, or assets used in the manufacture or sale in or to the U.S. of any CAD/CAM

products by any concern, corporate or non-corporate, engaged in the manufacture or sale of any CAD/CAM products without the prior approval of the Commission.

IN THE MATTER OF  
WESTERN GENERAL DAIRIES, INC.

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

*Docket C-3089. Complaint, May 4, 1982—Decision, May 4, 1982*

This consent order requires a Utah dairy cooperative to cease engaging in price discrimination in the sale and distribution of raw milk and dairy products, or communicating in any manner disparaging or derogatory information or opinions concerning competing firms. Commencing one year from its effective date, the order bars the cooperative from restricting, for more than six months, the sale or transfer of "base" by any of its members to any bona fide Grade A milk producer. ("Base" is a member's right to receive from the cooperative the going rate for raw milk.)

*Appearances*

For the Commission: *David M. Newman and Jerome M. Steiner, Jr.*

For the respondent: *Randon W. Wilson, Jones, Waldo, Holbrook & McDonough, Salt Lake City, Utah.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Western General Dairies, Inc., an incorporated cooperative association, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, 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 Western General Dairies, Inc. is an incorporated cooperative association organized, existing and doing business under and by virtue of the laws of the State of Utah;

Respondent during the period 1973 to 1975 acted as a marketing agent for Federated Dairy Farms, Inc., General Dairies, Inc., and Upper Snake River Valley Dairymen's Association, each an incorporated cooperative association, hereinafter collectively referred to as the "other cooperatives."

Respondent currently owns and operates and for some time last past has owned and operated a number of processing facilities, each

of which was previously owned or used by one of the other cooperatives.

Respondent has had as members in excess of ninety percent of those Grade A producers who were members of the other cooperatives prior to respondent's appointment as marketing agent.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and distribution of raw milk and dairy products, on its own behalf and on behalf of the other cooperatives, and respondent's members are now and for some time last past have been engaged in the production of raw milk.

PAR. 3. Respondent receives milk from its members who are located in the states of Utah and Idaho.

Respondent sells and distributes or has sold and distributed raw milk to independent processors in the States of Utah, Idaho, Wyoming, and Colorado. Respondent sells and distributes dairy products to wholesale and retail customers in the States of Utah, Wyoming, and Idaho, and to other states in the Western United States.

Respondent operates processing facilities in the States of Utah and Idaho.

There is now and has been at all times mentioned in this Complaint a pattern and course of commerce in respondent's products which is in and affects interstate commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this Complaint, respondent has been and is in substantial competition with other corporations, cooperative associations, individuals and partnerships engaged in the production, sale and distribution of raw milk and in the manufacture, sale and distribution of dairy products.

PAR. 5. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the states above mentioned, the purpose and effect of which is and has been to monopolize and control the supply of raw milk in those states and to monopolize and control the sale and distribution of dairy products in Utah and Southeastern Idaho.

PAR. 6. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy. To carry out said practice and policy, respondent adopted and employed the following means and methods among others:

- (a) By offering and granting advantageous prices and credit

terms to certain dairy products purchasers which were not offered or granted to other purchasers who compete with them in the resale of such products, it engaged in price discrimination among its purchasers, to the injury of its competitors in the manufacture, sale and distribution of dairy products;

(b) It and its agents, members and employees communicated derogatory information concerning the credit-worthiness of persons, firms, corporations and cooperatives which compete with respondent in the sale and distribution of dairy products;

(c) It has unduly restricted the sale or transfer of base by members desiring to leave the cooperative by conditioning such sale or transfer upon such members' cessation of Grade A milk production.

The above are the means and methods which respondent has used to monopolize and control the supply of raw milk and the sale and distribution of dairy products in the above mentioned states.

PAR. 7. The aforesaid acts and practices have had the capacity, tendency, and effect of hindering, eliminating or suppressing the competition in the production, sale and distribution of raw milk and the sale and distribution of dairy products in the States of Utah and Southeastern Idaho, thus tending to obstruct the free and natural flow of commerce and the freedom of competition in the channels of interstate commerce.

PAR. 8. The acts and practices of respondent, as herein alleged, were and are all to the prejudice of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. Certain of the acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Chairman Miller did not participate.

#### 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 San Francisco 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 Clayton 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, 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 Western General Dairies, Inc. is an incorporated cooperative association, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its offices and principal place of business located at 195 West 7200 South, in the City of Salt Lake City, State of Utah.

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 the purposes of this Order, the following definitions shall apply:

*Respondent* means Western General Dairies, Inc.

*Raw Milk* means raw, unprocessed cow's milk.

*Dairy products* means any products processed from raw milk and includes but is not limited to milk, skim milk, buttermilk, two percent milk, flavored milk, flavored milk drink, filled milk, whipping and table cream, half and half, sour cream, cottage cheese, concentrated milk, fortified milk, reconstituted milk or any mixture in fluid form of milk, skim milk or cream, ice milk, ice cream, powdered milk, butter, yogurt, cheese, or cheese products.

*Producer* means a person or firm which operates a farm which produces raw milk.

*Member* means a producer which belongs to or is affiliated with a cooperative association.

*Handler* means any person, firm, corporation or cooperative association which is considered a handler within any Federal or State Marketing Order.

*Processor* means a person, firm or corporation, other than a handler, which purchases raw milk.

*Base* means any right granted or sold by a cooperative association to its members allowing such members to receive from the cooperative the U.S.D.A. Uniform Blend Price or any other established price for any given amount of raw milk.

*Grade A* means the production of raw milk in compliance with the inspection requirements of a duly constituted health authority for fluid consumption.

#### I.

*It is ordered*, That respondent Western General Dairies, Inc., an incorporated cooperative association, its successors and assigns, and its officers, and respondent's agents, representatives, employees, and members, directly or indirectly or through any corporation, cooperative association, subsidiary, division or other device, in connection with the purchasing, offering for sale, sale or distribution of raw milk or dairy products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Discriminating directly or indirectly in the price of any such product by selling to any customer at a net price higher than the net price charged any other customer who competes in the resale and distribution of such product with the customer paying the higher price. "Net price," as used in this Order, shall mean the ultimate cost to the customer, and for purposes of determining such cost, shall take into account all rebates, allowances, commissions, discounts, credit arrangements, terms and conditions of sale, and other forms of direct and indirect price reductions, by which the ultimate cost to the customer is affected:

B. Furnishing, contracting to furnish or contributing to the furnishing of services or facilities in connection with the handling, sale or offering for sale of any such product to any customer of such product bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other customers who resell such product in competition with any customer who receives such services or facilities;

C. Communicating in any way, whether orally or in writing, any disparaging or derogatory information or opinions concerning any person or firm which competes with respondent in the production or sale of raw milk or dairy products; *provided, however*, that respondent may provide truthful information about such person's or firm's credit relationship with respondent upon written request by (1) a credit reporting agency or (2) any prospective creditor of such person or firm.

## II.

*It is further ordered*, That respondent shall cease and desist from executing or continuing in force any membership contract or agreement with any member which restricts in any way the right of such member to sell raw milk to any person, firm, or association after the expiration of such contract or agreement, except as provided in Section III of this Order.

## III.

*It is further ordered* That, commencing one year after the date of service of this Order, respondent shall cease and desist from restricting the sale or transfer of base by any member in any manner, including but not limited to (1) tying such sale or transfer to the concurrent sale or transfer of land, fixtures, or livestock, or (2) requiring that any member cease, for a period longer than six months, shipping or using raw milk for any Class I utilization, as Class I is defined by the Great Basin Milk Marketing Order;

*Provided, however*, That respondent may refuse to authorize a sale or transfer of base

(1) to any producer who is not a Grade A producer or who will not become a Grade A producer on or before the date on which such sale or transfer becomes effective;

(2) to any producer who is not a member of respondent or who will not become a member of respondent, on or before the date on which such sale or transfer becomes effective; *provided, however*, that respondent may not refuse to accept a producer as a member in order to bar such a sale or transfer;

(3) to any producer (a) whose location would necessitate a net increase in pickup routes of more than 20 miles; or (b) who would not be able to ship an average of 5000 pounds of milk or more per pickup;

(4) where respondent has not received written notice of such sale

or transfer more than 60 days prior to the date on which such sale or transfer becomes effective.

IV.

*It is further ordered,* That respondent shall, within sixty (60) days after service upon it of this Order, distribute a copy of this Order to each of its operating divisions and to all officers, employees, agents and members and shall distribute a copy of this Order to any person or firm that becomes a member within five (5) years after service of this Order.

V.

*It is further ordered,* That 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.

VI.

*It is further ordered,* That, for a period of ten (10) years after service upon it of this Order, respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the appointment of a marketing agent, the transfer of any facility designated as a pool plant under any Federal Milk Marketing Order, or any other change in the respondent which may affect compliance obligations arising out of the Order.

Chairman Miller did not participate.

Modifying Order

99 F.T.C.

IN THE MATTER OF

THE AMERICAN MEDICAL ASSOCIATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT*Docket 9064. Final Order, Oct. 12, 1979—Modifying Order, May 19, 1982*

The FTC, in accordance with a decision and judgment rendered by the Court of Appeals for the Second Circuit on October 7, 1980, has modified its Final Order In the Matter of The American Medical Association, et al. issued on October 12, 1979 (94 F.T.C. 701). The modified order, effective May 19, 1982 narrows the scope of the order so as not to encroach upon the valid activities of the AMA.

## MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Second Circuit a petition for review of the Commission's cease and desist order issued herein on October 12, 1979; and the Court having rendered its decision and judgment on October 7, 1980, affirming and enforcing the Commission's order with modification of Parts I and II; and the Supreme Court of the United States having affirmed by an equally divided court the judgment of the court of appeals on March 23, 1982, and having denied a petition for rehearing on May 3, 1982:

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

## ORDER

## I.

*It is ordered,* That respondent American Medical Association, and its delegates, trustees, councils, committees, officers, representatives, agents, employees, successors and assigns, directly or indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of physicians' services, or of information about physicians' services, facilities or

equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, including but not limited to bidding practices, of patients, patronage, or contracts to supply physicians' services, by any physician or by any organization with which physicians are affiliated; and

C. Inducing, urging, encouraging, or assisting any physician, or any medical association, group of physicians, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this Part.

Nothing contained in this Part shall prohibit respondent from formulating, adopting, disseminating to its constituent and component medical organizations and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

## II.

*It is further ordered,* That respondent American Medical Association, and its delegates, trustees, councils, committees, officers, representatives, agents, employees, successors and assigns, directly or indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Restricting, regulating, impeding, advising on the ethical propriety of, or interfering with the consideration offered or provided to any physician in any contract with any entity that offers physicians' services to the public, in return for the sale, purchase or distribution of his or her professional services, except for professional peer review of fee practices of physicians;

B. Restricting, interfering with, or impeding the growth, development or operations of any entity that offers physicians' services to the public, by means of any statement or other representation concerning the ethical propriety of medical service arrangements that limit the patient's choice of a physician;

C. Restricting, interfering with, or impeding the growth, development or operations of any entity that offers physicians' services to the public, by means of any statement or other representation concerning the ethical propriety of participation by non-physicians in the ownership or management of said organization; and

D. Inducing, urging, encouraging, or assisting any physician, or any medical association, group of physicians, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this Part.

### III.

*It is further ordered,* That respondent American Medical Association cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

- A. Reasonable written notice of the allegations against him or her;
- B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and
- C. The written findings or conclusions of respondent with respect to such allegations.

### IV.

*It is further ordered,* That respondent American Medical Association:

- A. Send by first class mail a copy of a letter in the form shown in Appendix A to this Order to each of its present members and to each constituent and component organization of respondent, within sixty (60) days after this Order becomes final.
- B. For a period of ten years, provide each new member of respondent and each constituent and component organization of respondent with a copy of this Order at the time the member is accepted into membership.
- C. Within ninety (90) days after this Order becomes final, remove from respondent American Medical Association's *Principles of Medical Ethics* and the Judicial Council's *Opinions and Reports*, and from the constitution and bylaws and any other existing policy statement or guideline of respondent, any provision, interpretation or policy statement which is inconsistent with the provisions of Parts I and II of this Order and, within one hundred and twenty (120) days

after this Order becomes final, publish in the *Journal of the American Medical Association* and in *American Medical News* the revised versions of such documents, statements, or guidelines.

D. Require as a condition of affiliation with respondent that any constituent or component organization agree by action taken by the constituent or component organization's governing body to adhere to the provisions of Parts I, II, and III of this Order.

E. Terminate for a period of one year their affiliation with any constituent or component organization within one hundred and twenty (120) days after learning or having reason to believe that said constituent or component organization has engaged, after the date this Order becomes final, in any act or practice that if committed by respondent would be prohibited by Part I, II, or III of this Order.

## V.

*It is further ordered,* That respondent American Medical Association:

A. Within sixty (60) days after the Order becomes final publish a copy of this Order with such prominence as feature articles are regularly published in the *Journal of the American Medical Association* and in *American Medical News* or in any successor publications.

B. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order.

C. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts I and II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising, solicitation, or contract practice involving any of its members.

D. Within one year after this Order becomes final, and annually thereafter, for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Parts I and II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising, solicitation or contract practice involving any of its members.

## VI.

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

## APPENDIX A

Dear Doctor:

As you know, the Federal Trade Commission issued a complaint against the AMA on December 19, 1975, challenging the AMA's ethical restrictions on the advertising, solicitation, and contractual practices of its members. The complaint also named the Connecticut State Medical Society and the New Haven County Medical Association, Inc., as respondents.

In an opinion issued on [insert issue date], the FTC held that the AMA, the two Connecticut medical societies, and other state and local medical associations have unlawfully restricted the advertising, solicitation, and contractual practices of their members in violation of Section 5 of the Federal Trade Commission Act.

In conjunction with that opinion, the Commission issued an order which has not become final. This order is printed in the [insert issue date] issue of the *Journal of the American Medical Association*, the [insert issue date] issue of *American Medical News* and may be obtained from the AMA headquarters or from your state or local medical society.

Among other things, the order forbids any action by AMA that would:

- Restrict its members' solicitation of patients by advertising, submission of bids, or other means.
- Interfere with either the amount or the form of compensation provided a member in exchange for his or her professional services, in contracts with entities offering physician services to the public.
- Characterize as unethical the use of closed panel or other health care delivery plans that limit the patient's choice of a physician.
- Characterize as unethical the participation of non-physicians in the ownership or management of health care organizations that provide physician services to the public.

However, the order does not prohibit the AMA from formulating and enforcing reasonable ethical guidelines governing deceptive advertising and solicitation (including unsubstantiated representations). The AMA may also issue guidelines concerning uninvited, in-person solicitation of patients who, because of their particular circumstances, are vulnerable to undue influence.

Finally, the order requires the AMA to amend the *Principles of Medical Ethics* and

the Judicial Council's *Opinions and Reports* and to sever all ties for one year with any state or local medical society that engages in conduct of the type prohibited under the order.

Thank you for your cooperation.

Sincerely,

President

Complaint

99 F.T.C.

IN THE MATTER OF  
VOLKSWAGEN OF AMERICA, INC.

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

*Docket C-3090. Complaint, May 24, 1982—Decision, May 24, 1982*

This consent order requires, among other things, a Warren, Mich. producer and seller of motor vehicles and replacement parts to cease including in owners' manuals for diesel motor vehicles any instructions for oil filter installation that differs from that provided to its dealers. Respondent is required to include in future maintenance manuals a conspicuous statement warning of the need to follow oil filter installation instructions carefully to avoid serious engine damage. Further, the firm is required to reimburse current and past owners of 1977-1981 Volkswagen and Audi diesels for repairs which resulted from oil filter leaks; notify these owners of the reimbursement offer by first class mail; and provide them with currently recommended oil filter installation information. Additionally, respondent is required to locate and pay reimbursement to eligible owners in a timely manner and maintain specified records for a period of three years.

*Appearances*

For the Commission: *Stephen H. Meyer.*

For the respondent: *N. Richard Skipper, Jr.*, in-house counsel, Warren, Mich. and *Gerhard P. Riechel*, in-house counsel, Englewood Cliffs, N.J.

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 Volkswagen of America, Inc., a corporation subject to the Commission's jurisdiction, hereinafter sometimes referred to as respondent VWoA, 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 Volkswagen of America, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 27621 Parkview Road, Warren, Michigan.

PAR. 2. Respondent VWoA is now and has been engaged in the

production, distribution, offering for sale or sale of vehicles or vehicle parts.

PAR. 3. Respondent VWoA maintains and has maintained a substantial course of business, including the acts and practices alleged in this complaint, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. An abnormally high number of Volkswagen and Audi vehicles sold in the United States beginning in the 1977 model year and equipped with diesel engines have experienced, are experiencing, or are likely to experience oil filter leaks. Such oil filter leaks have caused engine problems and engine failures resulting from lack of lubricating oil which are costly to correct or may significantly affect the quality, reliability, durability, or performance of the vehicles.

PAR. 5. Respondent knew or should have known that the oil filter leaks described in Paragraph Four above have occurred in abnormally high numbers.

PAR. 6. Respondent stated the following as part of the recommended oil filter installation procedure in its owner's manuals for its 1977 and 1978 model year vehicles equipped with diesel engines:

Tighten new filter by hand as tightly as possible. Do not use a wrench to tighten filter.

PAR. 7. Respondent stated the following as part of the recommended oil filter installation procedure in its owner's manuals for its 1979 and 1980 model year vehicles equipped with diesel engines:

Only hand-tighten according to filter manufacturer's instructions on the carton or on the filter element.

PAR. 8. Respondent has notified its dealers about oil filter leaks on its vehicles equipped with diesel engines and, to reduce the likelihood of oil filter leaks, has sent revised oil filter installation instructions for vehicles equipped with diesel engines to its dealers. The revised installation instructions, which prescribe precise installation procedures using specified wrenches, contradict directions contained in the owner's manuals for the 1977-1980 model year vehicles equipped with diesel engines.

PAR. 9. Respondent has failed and is failing to disclose to owners of 1977-1980 Volkswagen and Audi vehicles equipped with diesel engines the following facts:

1. the likelihood of oil filter leaks on its diesel engines,
2. the revised installation instructions described in Paragraph Eight, and

3. the reduced likelihood of oil filter leaks if the revised installation instructions are carefully followed.

These facts relate to the existence, nature, extent, or prevention of oil filter leaks on diesel vehicles.

PAR. 10. The facts described in Paragraph Nine above are material to many owners because such facts, if known, would be likely to affect their decisions concerning the maintenance, repair, use or care of Volkswagen and Audi vehicles.

PAR. 11. Respondent has failed and is failing to disclose material facts to owners of Volkswagen and Audi vehicles.

PAR. 12. The acts and practices of respondent in failing to disclose material facts have had and continue to have the capacity and the tendency to mislead many members of the public, particularly those who own Volkswagen and Audi vehicles.

PAR. 13. The acts and practices of respondent also have caused or continue to cause substantial economic harm to many members of the public who have paid or continue to pay for engine repairs which they might not otherwise have purchased if respondents had adequately disclosed such material facts.

PAR. 14. The acts and practices of respondent has caused or continues to cause substantial economic harm to many members of the public who do not take preventive measures which they might take if such material facts were adequately disclosed.

PAR. 15. The acts and practices of respondent in failing to disclose material facts as alleged herein 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 and unfair or deceptive acts or 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 Bureau of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 has 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 by interested persons 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 Volkswagen of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 27621 Parkview Road, in the City of Warren, State of Michigan.

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:

1. *Dealer* shall mean any authorized United States Volkswagen or Audi dealer regardless of whether the dealer purchases vehicles directly from respondent or from a distributor of respondent.

2. *Owner* shall mean any individual or entity in whose name a vehicle is currently or has been previously registered or titled with the appropriate state authority, including, but not limited to, vehicles held for resale.

3. *Current owner* shall mean any owner in whose name a vehicle is registered or titled with the appropriate state authority. Respondent shall use any one or more of the following methods to obtain the most up to date and complete list available of the names and addresses of current owners in carrying out its obligations under Parts I and III of this Order: state records, a commercial locator service, or respondent's records. If the name and address of the current owner cannot be ascertained, then *current owner* shall also

mean the most recent purchaser known to respondent, respondent's dealers, or both.

4. *Engine repairs due to oil filter leaks* shall consist of expenses necessitated by an oil filter leak for engine repair or engine replacement, plus towing charges, oil and oil filter replacement. It does not include reimbursement for towing charges, oil, and replacement oil filter(s) if no engine repair or engine replacement was undertaken.

5. *oil filter leak(s)* shall mean any leakage of lubricating oil from the oil filter or from the area where the oil filter is attached to the engine.

#### PART I

*It is ordered,* That respondent Volkswagen of America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacturer, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing in any owner's manual for its diesel engine vehicles an oil filter installation procedure that is different in substance from that provided to its dealers with respect to vehicles covered by such manual, unless respondent notifies affected current owners via first class mail that the installation procedure set out in their owner's manuals is different in substance from that provided to respondent's dealers and in what respects the instructions differ.

#### PART II

*It is further ordered,* That respondent Volkswagen of America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall:

A. Include, verbatim, using distinctive and conspicuous type face or ink color or both, which shall be at least as distinctive and conspicuous as the type face or ink color or both used elsewhere in owner's manuals for important maintenance items, the following

statement in owner's manuals of Volkswagen and Audi vehicles with diesel engines beginning in the 1982 model year:

**FOLLOW THESE INSTRUCTIONS CAREFULLY. AN IMPROPERLY INSTALLED FILTER MAY LEAK AND DAMAGE YOUR ENGINE.**

B. Beginning 30 days following the date this order is served on respondent, print clearly and conspicuously on all oil filters which are sold by respondent and which are recommended for application on respondent's diesel engine vehicles:

1. the most current installation instructions; and
2. the following statement, verbatim:

**IMPORTANT: FOLLOW THESE INSTRUCTIONS CAREFULLY. AN IMPROPERLY INSTALLED FILTER MAY LEAK AND DAMAGE YOUR ENGINE.**

C. Disseminate, by respondent's usual methods, within 30 days following the date this order is served upon respondent, a Product Circular to Volkswagen and Audi dealers which effectively communicates the following:

1. that oil filter leaks on diesel engines have occurred; and
2. that mechanics should be sure to install the filters according to the most current procedures.

### PART III

*It is further ordered,* That respondent, within 30 days following the service of this order on respondent, shall:

A. Send by first class mail to each current owner of a 1977 through 1981 model year Volkswagen and Audi vehicle equipped with a diesel engine a copy of Exhibits A, B and E and a postage-paid self-addressed return envelope.

B. Send by first-class mail a copy of Exhibits B, C and E and a postage-paid self-addressed return envelope to any owner of a 1977 through 1981 model year Volkswagen or Audi vehicle equipped with a diesel engine who requests information concerning reimbursement for oil filter leaks.

C. Search its warranty and complaint records and those of its distributors to ascertain the names and addresses of owners who had previously complained about and not received full reimbursement for engine repairs due to oil filter leaks on diesel engines. Owners whose names appear on any such records shall be sent by first class mail Exhibits B, D1, and E and a postage-paid self-addressed return

envelope; *provided, however*, that where records clearly establish an owner's entitlement to and amount of reimbursement under Part IV of this order, respondent shall send a check for such amount and Exhibits D2, B, and E.

#### PART IV

*It is further ordered*, That respondent:

A. Provide reimbursement to each owner of a 1977 through 1981 model year Volkswagen or Audi vehicle equipped with a diesel engine who has unreimbursed expenses for engine repairs due to an oil filter leak, which occurred prior to 30 days after the owner's receipt of a letter sent pursuant to Parts III A, B or C of the order or 60 days after the date of mailing of such letter, whichever comes first; *provided, however*, that respondent need not reimburse an owner for an engine repair due to an oil filter leak if the oil filter on the vehicle at the time of the leak had not been distributed by respondent, unless the leak was proximately caused by a Volkswagen or Audi original equipment or replacement part for which repair or replacement was necessary; *provided, further, however* that respondent may deny reimbursement to owners whose initial request in writing for reimbursement is received more than two (2) years after the date this order is served upon respondent or more than six (6) months after the owner has received a letter pursuant to Part III A, B, or C of this order, whichever comes first.

B. Shall pay full reimbursement for engine repairs due to an oil filter leak upon presentation by an owner of reasonable evidence that the owner is eligible for reimbursement pursuant to Part IV A above; *provided, however*, respondent may perform a documented inquiry concerning a claim if it believes for good cause that the owner may not be eligible to receive the amount claimed by the owner. Such an inquiry must begin and any request that an owner provide further information must be sent within 30 days after the owner has mailed a copy of Exhibit B to respondent or otherwise requested reimbursement in writing.

C. Shall within the 30 days set out in Part IV B mail to the owner a check for the amount claimed by the owner unless:

1. respondent both begins an inquiry and notifies the owner in writing that an inquiry is being conducted; or
2. respondent denies reimbursement for some or all of the amount claimed by the owner, and sends the owner a letter pursuant to Part IV F, below.

D. Shall complete each inquiry conducted pursuant to Part IV B:

1. within sixty (60) days after the owner has mailed a copy of Exhibit B to respondent or otherwise requested reimbursement in writing; or

2. within thirty (30) days following the mailing to respondent of any response to a request for additional information sent to an owner as part of an inquiry conducted pursuant to Part IV B,

whichever is later.

E. Shall, upon completion of each inquiry, send the owner a check, a letter pursuant to Part IV F, or both.

F. Shall send a letter by first class mail to each owner who has been denied reimbursement for some or all of the amount claimed by the owner. This letter shall:

1. notify the owner of the disposition of the claim;
2. give specific reasons for the disposition;
3. inform the owner that he/she may have other legal rights;
4. if available in the area where the owner lives, inform the owner of the existence of the Better Business Bureau Arbitration program and the following:

- a. that the program is operated free of charge to the owner;
- b. that by choosing arbitration both parties may give up the right to have the facts of the dispute decided in court;
- c. that the arbitrator's decision is binding and may be enforced in court;
- d. that the arbitrator's decision can be appealed only for limited reasons; and
- e. that owners who want more information should contact their local Better Business Bureau; and

5. inform the owner that the oil filter reimbursement program is being conducted by agreement between Volkswagen of America and the Federal Trade Commission, and that if he/she believes his claim was improperly denied he/she may contact the FTC's Compliance Division of the Bureau of Consumer Protection at 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

#### PART V

*It is further ordered,* That respondent shall maintain accurately and retain for a period of three (3) years following the service of this

order on respondent the following records which may be inspected by Commission staff members upon fifteen (15) days' notice:

1. a list, by state and, for each state, in alphabetical order, (or a data base from which such list may be readily compiled) containing the names and addresses of each owner of a Volkswagen and Audi vehicle to whom Exhibits A-E were sent and the dates such letters were sent to each;

2. a list, by state and, for each state, in alphabetical order, containing the name and address of each owner of a Volkswagen or Audi vehicle who received a check pursuant to Part IV C and each owner who requested reimbursement from respondent pursuant to Exhibit B or another writing and, for each, the date such request was received by respondent, the total dollar amount of such request. Respondent shall also maintain all documents initially submitted by owners and each of the following as applicable to such owner: documents indicating whether follow-up information was requested and the date such information was requested; all additional information submitted in response to any request for follow-up information and the date such information was received; documents relating to any inquiry by respondent of the circumstances surrounding such owner's claim; all documents indicating the total dollar amount of reimbursement, if any, such owner was sent, the date it was sent, and a copy of the notice of final disposition of the claim, if sent to such owner.

#### PART VI

*It is further ordered,* That any and all correspondence sent by respondent pursuant to the provisions of this order shall be on respondent's corporate stationery. All envelopes sent pursuant to Part III shall contain no marking other than respondent's name and return address, the postage marking, the name and address of the addressee, and the words "IMPORTANT MAINTENANCE AND REIMBURSEMENT INFORMATION" disclosed conspicuously on the front.

#### PART VII

*It is further ordered,* That respondent shall send a copy of this order to each of its dealers.

## PART VIII

*It is further ordered,* That no provision of this order shall be construed to limit, in any way, any private right of action which any individual, partnership, corporation or other entity might have against respondent or against any oil filter manufacturer.

## PART IX

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

## PART X

*It is further ordered,* That for so long as any other provisions of this order remain in effect respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the 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.

## PART XI

*It is further ordered,* That respondent shall within sixty (60) days after service upon it of the order, and also annually for two (2) years thereafter, file with the Commission reports in writing, setting forth in detail the manner and form in which it has complied with this order.

## PART XII

*It is further ordered,* That Parts I and II A and B of the order shall terminate at any time if,

1. respondent's oil filter installation instructions do not provide for any wrenches or special tools to tighten the filter, and
2. respondent possesses competent and reliable engineering evidence which substantiates that the installation of the oil filter without the use of wrenches or special tools under normal field conditions would be substantially as effective in preventing oil filter leaks as installation of the filter with wrenches or special tools.

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## EXHIBIT A

IMPORTANT MAINTENANCE AND  
REIMBURSEMENT INFORMATION

Dear [Volkswagen] [Audi] Diesel Owner:

Some [Volkswagen] [Audi] diesel owners have reported oil leaks in the oil filter area of the engine. On occasion, this can lead to severe engine damage. Therefore, we'd like to tell you some important news about:

- \*new recommendations for oil filter installation procedures which can help prevent oil filter leak problems, and
- \*our reimbursement offer for past problems and warranty coverage for future problems like this.

## INSTALLATION INSTRUCTIONS

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

## REIMBURSEMENT OFFER

If you paid for engine repairs caused by an oil leak in the filter area, and were not reimbursed, and the filter was an Autobahn (VW/Audi) filter, we'll reimburse you for engine repairs, oil, filter, and towing. If the filter was not a VW/Audi/Autobahn filter, we'll pay for repairs only if a VW/Audi engine part that had to be repaired or replaced caused the problem. This offer covers engine repairs which occurred prior to or within 30 days after you receive this letter. If our coverage doesn't apply to engine repairs you paid for, check to see if the filter manufacturer will reimburse you for expenses.

Don't forget that your car's warranty may also provide coverage for these and other repair problems in the future. The "new vehicle limited warranty" covers defects in materials and workmanship for [12 months or 20,000 miles, whichever comes first (VW)]. [12 months, regardless of mileage (Audi)]. The "replacement parts limited warranty" covers such defects for six months or 6,000 miles.

## COMPLETE THE ENCLOSED FORM

If you believe you may be entitled to reimbursement under this program, complete the enclosed form and send it to us. *Even if you were previously denied warranty service or if you aren't sure you're eligible, send in the form.* Within 30 days, we'll send you a check or contact you with information about the status of your claim.

You must send in your form within six months after you receive this letter to qualify for the reimbursement offer. If you have any questions, don't hesitate to contact us or your local dealer.

Sincerely,

Volkswagen of America, Inc.

**EXHIBIT B****REIMBURSEMENT REQUEST ENGINE REPAIR  
DUE TO DIESEL OIL FILTER LEAK**

**INSTRUCTIONS:** *Make sure you follow these instructions carefully. If we don't have enough information your claim might be delayed.*

Attach to this form legible copies of all the documents you have which support your claim including receipts, repair orders, cancelled checks or money orders. If you don't have a repair order, get a short statement from the garage or dealership where the repair was done which tells us what work was done, and why.

We will reimburse you for engine repairs, oil, a new oil filter, and towing if you qualify for reimbursement. We will *not* reimburse you if your only damage was loss of oil and towing.

Name \_\_\_\_\_ VIN \_\_\_\_\_ [Preprinted] \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Zip Code \_\_\_\_\_ Phone ( ) \_\_\_\_\_

Total Amount Actually Paid: \$ \_\_\_\_\_  
Brand of Filter \_\_\_\_\_

To the best of my knowledge, the above claim is for expenses I had to pay for which I was not reimbursed and which resulted from an oil leak from my car's oil filter.

I hereby certify that the above information is true and correct.

\_\_\_\_\_  
Date Signature  
**BE SURE TO ENCLOSE ALL YOUR PROOF WHEN YOU MAIL US THIS FORM!**

**EXHIBIT C****IMPORTANT MAINTENANCE AND  
REIMBURSEMENT INFORMATION**

Dear [Volkswagen][Audi] Diesel Owner:

Thank you for contacting us about oil filter leaks on our diesel engines. Some [Volkswagen] [Audi] diesel owners have reported oil leaks in the oil filter area of the engine. On occasion, this can lead to severe engine damage. Therefore, we'd like to tell you some important news about:

- \*new recommendations for oil filter installation procedures which can help prevent oil filter leak problems, and
- \*our reimbursement offer for past problems and warranty coverage for future problems like this.

**INSTALLATION INSTRUCTIONS**

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and

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check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

#### REIMBURSEMENT OFFER

If you paid for engine repairs caused by an oil leak in the filter area, and were not reimbursed, and if the filter was an Autobahn (VW/Audi) filter, we'll reimburse you for engine repairs, oil, filter, and towing. If the filter was not a VW/Audi/Autobahn filter, we'll pay for repairs only if a VW/Audi engine part that had to be replaced caused the problem. This offer covers engine repairs which occurred prior to or within 30 days after you receive this letter. If our coverage doesn't apply to engine repairs you paid for, check to see if the filter manufacturer will reimburse you for expenses.

Don't forget that your car's warranty may also provide coverage for these and other repair problems in the future. The "new vehicle limited warranty" covers defects in materials and workmanship for [12 months or 20,000 miles, whichever comes first (VW)]. [12 months, regardless of mileage (Audi)]. The "replacement parts limited warranty" covers such defects for six months or 6,000 miles.

#### COMPLETE THE ENCLOSED FORM

If you believe you may be entitled to reimbursement under this program, complete the enclosed form and send it to us. *Even if you were previously denied warranty service or if you aren't sure you're eligible, send in the form.* Within 30 days, we'll send you a check or contact you with information about the status of your claim.

You must send in your form within six months after you receive this letter to qualify for this reimbursement offer. If you have any questions, don't hesitate to contact us or your local dealer.

Sincerely,

Volkswagen of America, Inc.

#### EXHIBIT D1

#### IMPORTANT MAINTENANCE AND REIMBURSEMENT INFORMATION

Dear [Volkswagen] [Audi] Diesel Owner:

Our records show that your car has experienced an oil filter leak. As you may know, on occasion, this can lead to severe engine damage. Therefore, we'd like to tell you some important news about:

- \*new recommendations for oil filter installation procedures which can help prevent oil filter leak problems, and
- \*our reimbursement offer for past problems and warranty coverage for future problems like this.

#### INSTALLATION INSTRUCTIONS

We've modified the diesel oil filter instructions to emphasize that the filter must be

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properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

## REIMBURSEMENT OFFER

If you paid for engine repairs caused by an oil leak in the filter area, and were not reimbursed, and the filter was an Autobahn (VW/Audi) filter, we'll reimburse you for engine repairs, oil, filter, and towing. If the filter was not a VW/Audi/Autobahn filter, we'll pay for repairs only if a VW/Audi engine part that had to be replaced caused the problem. This offer covers engine repairs which occurred prior to or within 30 days after you receive this letter. If our coverage doesn't apply to engine repairs you paid for, check to see if the filter manufacturer will reimburse you for expenses.

Don't forget that your car's warranty may also provide coverage for these and other repair problems in the future. The "new vehicle limited warranty" covers defects in materials and workmanship for [12 months or 20,000 miles, whichever comes first (VW)]. [12 months, regardless of mileage (Audi)]. The "replacement parts limited warranty" covers such defects for six months or 6,000 miles.

## COMPLETE THE ENCLOSED FORM

If you believe you may be entitled to reimbursement under this program, complete the enclosed form and send it to us. *Even if you were previously denied warranty service or if you aren't sure you're eligible, send in the form.* Within 30 days, we'll send you a check or contact you with information about the status of your claim.

You must send in your form within six months after you receive this letter to qualify for this reimbursement offer. If you have any questions, don't hesitate to contact us or your local dealer.

Sincerely,

Volkswagen of America, Inc.

## EXHIBIT D2

## IMPORTANT

## REIMBURSEMENT CHECK ENCLOSED

Dear [Volkswagen][Audi] Diesel Owner:

Our records show that you experienced engine damage related to an oil filter leak on your [Volkswagen] [Audi] diesel vehicle and that reimbursement for your repair costs was not made available in your case.

We have recently reconsidered your claim. On the basis of our review, we have determined that reimbursement was appropriate and should have been granted.

Accordingly, we are pleased to enclose our check in the amount of \$ \_\_\_\_\_. We regret the delay. However, we are pleased that we were able to be of assistance.

If this amount is less than what you paid for engine repairs due to an oil filter leak, oil, a new oil filter, and towing, fill out the attached form and return it to us in the enclosed postage-paid envelope. Even if you request additional reimbursement, you

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can still cash this check. Within 30 days, we'll send you an additional check or contact you with information about the status of your claim.

If you do request additional reimbursement under this offer, you must send in your form within 6 months after you receive this letter. If you have any questions, don't hesitate to contact us or your local dealer.

#### INSTALLATION INSTRUCTIONS

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

Sincerely,

Volkswagen of America, Inc.

#### EXHIBIT E

##### OIL FILTER INSTALLATION INSTRUCTIONS

1. Use VW Part No. 068 115 561 or equivalent. [For Owner's Manual and Exhibit E only]
2. Apply thin film of engine oil to filter gasket. (Do not use grease.)
3. Screw on filter by hand until filter gasket contacts flange firmly all round.
4. Tighten filter 3/4 turn. Use VW filter cap wrench US-4496 or equivalent, wrench extension, and standard torque wrench.
5. Check dipstick for correct oil level.
6. Run engine at various speeds for 3-5 minutes.
7. Stop engine, use filter cap wrench (center drive socket), extension and torque wrench for final check. Torque must be at least 18 ft. lbs.
8. Re-check dipstick for correct oil level, add oil as needed.
9. Start engine and check for proper seal at the oil filter gasket.

**IMPORTANT: FOLLOW THESE INSTRUCTIONS CAREFULLY. AN IMPROPERLY INSTALLED FILTER MAY LEAK AND DAMAGE YOUR ENGINE.** [Figure 17-A14 from 1981 Rabbit Owner's Manual, P.93]

## IN THE MATTER OF

## WEYERHAEUSER COMPANY, ET AL.

*Docket 9150. Interlocutory Order, June 10, 1982*

ORDER DENYING MOTION OF WEYERHAEUSER COMPANY FOR LEAVE  
TO FILE REPLY MEMORANDUM

On April 21, 1982, Weyerhaeuser Company filed an application under Rule 3.23(b) of the Commission's Rules of Practice for review of a discovery order of the ALJ. On April 30, complaint counsel filed an answer. Weyerhaeuser has now requested the opportunity to file a reply memorandum because: (1) its application for review was only three pages (although the Rules allow for fifteen) and did not summarize the company's position, whereas complaint counsel used eight pages and did summarize their position, and (2) "complaint counsel's response misperceives the nature of the review sought."

Weyerhaeuser has not offered sufficient reason for the Commission to deviate from its Rules in this instance and allow for an additional filing. Interlocutory appeals of ALJ orders are entertained only in a narrow set of circumstances, and only after full consideration of all the issues by the ALJ. To allow otherwise would involve the Commission unduly in adjudicative proceedings and undermine the authority of its ALJ's. Consequently, the Rules allow the parties each one short, prompt filing. Weyerhaeuser's application for review was shorter than required; that was its decision.

In an interlocutory appeal, the Commission is concerned with the issues as they were briefed to and decided by the ALJ. There is little need for additional argument, unless one of the parties claims that the ALJ misperceived the issues before him. Even in such cases, the Rules provide adequate opportunity for argument in most instances.

Weyerhaeuser's motion is hereby denied.

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IN THE MATTER OF

WEYERHAEUSER COMPANY, ET AL.

*Docket 9150. Interlocutory Order, June 17, 1982*ORDER DENYING RESPONDENTS' APPEAL OF THE ALJ'S RULING OF  
JANUARY 6, 1982

On January 6, 1982, the ALJ granted complaint counsel's motion to exclude discovery in this case on any beneficial effects on either the community of North Bend, Oregon or the nation's balance of payments of the acquisition by Weyerhaeuser Company of Menasha Corporation's corrugated medium mill and adjacent mill site in North Bend. At the same time, the ALJ expressed a willingness to consider the admission of evidence on the effects of the acquisition on employment in North Bend, but only as it would pertain to the selection of a remedy in the case.

We agree with the ALJ that "[e]vidence regarding the alleged beneficial effects of the merger on the community of North Bend, Oregon and on the nation's balance of payments is extraneous to the determination of whether this merger constitutes a violation of either Section 7 or Section 5." (Order of April 7, 1982, p. 9) The ALJ's scholarly analysis of the case law on this issue is exhaustive and his conclusions are accurate: if a merger may substantially lessen competition in the market in which it occurs, it is a violation of Section 7 of the Clayton Act, regardless of perceived social or political benefits it may create; the same rule should apply to the analysis of mergers under Section 5 of the Federal Trade Commission Act.

In determining whether a legal violation has occurred, antitrust analysis does not ordinarily permit consideration of factors other than those pertaining to competition in the relevant markets. *U.S. v. Philadelphia Nat'l Bank*, 374 U.S. 321, 371 (1963); *Nat'l Soc'y of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978). While other factors might well be considered by the Commission in deciding whether to challenge a merger, or how to formulate an appropriate remedy, Congress set injury to competition as the ultimate legal standard for review under Section 7.\* The number of conceivably relevant benefits to a merger that the Commission might consider, such as those suggested by respondent, is virtually limitless; and the weight that might be given to them is not readily apparent or even empirically ascertainable. The balancing of such

\* Under certain circumstances, the analysis in preliminary injunction proceedings may be broader. *E.g., FTC v. Weyerhaeuser Co.*, 665 F.2d 1072 (D.C. Cir. 1981).

factors would, as complaint counsel argue, involve value judgments of the decisionmakers that would necessarily vary from case to case, and the meaning of the law would become unacceptably vague.

These same considerations militate against an interpretation of Section 5 that would similarly open up the area of inquiry in cases under the Federal Trade Commission act. The Commission sees no extraordinary circumstances that compel the interpretation of Section 5 as advocated by respondents.

The statements of various federal officials referred to by respondents indicate the existence of a public debate on how federal prosecutors may consider international trade in selecting cases for enforcement, and how the antitrust laws might be amended to take into account the effects of mergers on international trade. However, they do not evidence any dispute with regard to the meaning of current law.

For the aforesaid reasons, the appeal is hereby denied.