

IN THE MATTER OF

AIRCO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF
THE CLAYTON ACT

Docket 9098. Complaint, May 18, 1977 — Decision, July 31, 1979

This consent order, among other things, requires a Montvale, N.J. manufacturer and seller of industrial gases and welding products to cease, for a period of twenty years, from entering into, or enforcing agreements that require distributors of industrial gases to purchase from Airco any part of their industrial gas requirements, unless the initial term or renewal of such contracts and the minimum period for termination falls within specified time frame. The firm is also prohibited from requiring a distributor to purchase industrial gases at particular locations, or as a condition of purchasing welding or other industrial gas products at the same or any other location; and from refusing to sell its products to a distributor because that distributor refuses to purchase from Airco a designated part of its industrial gas requirements at a particular location. Additionally, the order prescribes arbitration for any dispute arising from company's refusal to sell; and sets forth the manner and form of such arbitration.

Appearances

For the Commission: *Gordon Youngwood, Peter L. Feldman, and Stephen C. Garavito.*

For the respondent: *W. Foster Wollen, Sherman & Sterling, New York City, R. Bruce MacWhorter, Danforth C. Newcomb and David Graus, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Airco, Inc. ("Airco"), respondent herein, has violated the provisions of Section 3 of the Clayton Act, as amended, (15 U.S.C. 14), and the provisions of 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 this complaint, stating its charges as follows:

DEFINITIONS

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

(a) "Distributors" shall mean a business firm whose primary function in the industrial gas and welding products business is the

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purchase of industrial gases and welding products for the purpose of resale.

(b) "Welding products" are the equipment, supplies and consummable items used to fuse or cut metals.

(c) "Industrial gases" shall mean the following gases: oxygen, nitrogen, argon, acetylene, hydrogen, and helium.

RESPONDENT

2. Respondent Airco is a publicly-owned New York corporation with its principal place of business at 85 Chestnut Ridge Road, Montvale, New Jersey.

3. Airco is engaged in the manufacture and sale of industrial gases, ferroalloys and carbide, medical gases and equipment, cryogenic equipment, welding and cutting equipment, carbon, graphite, electronics and metals.

4. For 1975 Airco had net sales of \$765.7 million and a net income of \$42.7 million.

5. Airco, one of the nation's three leading producers of industrial gases, sells industrial gases to distributors through its Airco Welding Products Division. During 1972, Airco had the second largest volume of domestic sales of acetylene, argon, helium, nitrogen and oxygen to distributors and the largest volume of domestic sales of hydrogen to distributors.

6. At all times relevant herein, Airco sold and shipped its products in interstate commerce and was engaged in commerce within the meaning of the Clayton Act, as amended, and was a corporation whose business was in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

TRADE AND COMMERCE

7. The relevant lines of commerce affected by the actions of Airco are the sales to distributors of each of the following relevant industrial gases: acetylene, argon, helium, hydrogen, nitrogen, and oxygen.

8. During 1972, there were substantial sales by Airco of acetylene, argon, helium, hydrogen, nitrogen, and oxygen to distributors. Airco is one of the major sellers of these six gases to distributors.

9. The United States and certain sections thereof constitute geographic markets or sections of the country for each relevant line of commerce.

10. Barriers to entry are high for a new distributor of relevant industrial gases.

11. Barriers to entry are high for a new supplier of relevant industrial gases.

ACTS AND PRACTICES

12. In the course of interstate commerce, Airco, a leading company in each relevant line of commerce alleged herein, has used and is using its economic power and has engaged and is engaging in acts and practices to foreclose competition in the sale of relevant industrial gases to distributors. Among the acts and practices in which Airco has engaged and is continuing to engage in the course of interstate commerce, are the following:

- (a) Requiring distributors, pursuant to a contract, agreement, or understanding, to purchase from Airco their total requirements of each of the relevant industrial gases.
- (b) Requiring distributors to purchase their total requirements of the relevant industrial gases from Airco as a condition to their purchasing any relevant industrial gas from Airco.
- (c) Requiring distributors to purchase their total requirements of the relevant industrial gases from Airco as a condition to their purchasing of welding products from Airco.
- (d) Making available to customers of industrial gas distributors who have ceased purchasing one or more Airco industrial gases, products at rates set for the purpose of destroying a competitor or eliminating competition.
- (e) Preventing, hindering and frustrating distributors from engaging in the production and sale of acetylene.

EFFECTS

13. The acts and practices identified in Paragraph 10 have or may have the following effects among others:

- (a) Substantially lessening competition for the sale of relevant industrial gases to distributors.
- (b) Substantially lessening competition for the sale of relevant industrial gases to consumers.
- (c) Increasing entry barriers into each line of commerce alleged herein.
- (d) Depriving distributors of the opportunity of competing for sales of relevant industrial gases to certain classes of customers.
- (e) Depriving distributors of the freedom of choice to purchase industrial gases from competitors of Airco.

VIOLATIONS

14. The acts and practices alleged herein constitute tying arrangements, exclusive dealing arrangements or total requirements contracts in violation of Section 3 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

15. The acts and practices alleged herein constitute unfair methods of competition or unfair acts and practices by Airco in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 3 of the Clayton Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Airco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 85 Chestnut Ridge Road, in the City of Montvale, State of New Jersey.
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 purpose of this order, the following definitions shall apply:

1. "Industrial gases" shall mean the following gases: oxygen, nitrogen, argon, acetylene, hydrogen and helium.

2. "Welding products" shall mean equipment, supplies and consumable items used to fuse or thermally to cut metals.

3. "Distributor" shall mean a business firm whose primary function in the industrial gas and welding products business is the purchase of industrial gases and welding products for the purpose of resale within the United States, but shall not include any business firm whose primary function in the resale of industrial gases and welding products is the distribution of industrial gases and welding products to entities engaged in the plumbing, heating or air conditioning trade.

4. "Location" shall mean a bona fide sales and distribution facility operated by a distributor as a receiving or distribution point for industrial gases, which facility ordinarily carries an inventory of industrial gases and welding products and is staffed with a bona fide sales force and operating and/or distribution personnel. Two or more facilities that are staffed by common sales and operating and/or distribution personnel shall be deemed to comprise a single location.

5. "Requirements" of any distributor for an industrial gas at any location shall mean such distributor's total requirements for such industrial gas either delivered to such location or delivered direct by the distributor to using customers which are generally served by sales or distribution personnel assigned to such location.

I

It is ordered and directed, That for a period of twenty (20) years from the date of service of this order, respondent Airco, Inc. (hereinafter Airco), its subsidiaries, divisions, affiliates, successors, and assigns, in connection with the distribution, offering for sale, or sale of industrial gases or welding products to distributors in which it owns less than a majority interest, shall:

A. Not offer, renew, extend or enter into any contracts or agreements, or enforce directly or indirectly those provisions of any contract or agreement, which require any distributor:

1. to purchase from Airco all or any part of its requirements of any industrial gas under a contract or agreement (a) having an initial term,

or a term on renewal, of more than 1 year or (b) if the agreement shall renew itself on an anniversary date unless terminated, or be terminable on notice, requiring prior notice of more than 90 days to effect such termination; or

2. to purchase from Airco all or any part of its requirements of any industrial gas at one or more locations as a condition to being permitted to purchase from Airco such industrial gas at another location; or

3. to purchase from Airco all or any part of its requirements of any industrial gas at any location as a condition to be permitted to purchase from Airco any other industrial gas at the same or any other location; or

4. to purchase from Airco all or any part of its requirements of any industrial gas at any location as a condition to being permitted to purchase from Airco any welding products.

B. Not refuse to sell, subject to Paragraph A 1 above, industrial gases or welding products to an Airco distributor because that distributor refuses (1) to purchase all or a designated part of its requirements of industrial gases from Airco; or (2) to purchase from Airco all or any part of its requirements of industrial gases at more than one of its locations.

II

It is further ordered, That for a period of twenty (20) years from the date of service of this order:

A. If Airco has at its instance refused to sell to an Airco Distributor one or more industrial gases or welding products, following an election by that distributor to purchase one or more industrial gases from a supplier other than Airco, and a dispute exists between the distributor and Airco as to whether such refusal by Airco, subject to Paragraph I A 1 above, is because that distributor refuses (1) to purchase from Airco all or a designated part of its requirements of industrial gases; or (2) to purchase from Airco all or any part of its requirements of industrial gases at more than one of its locations, then the distributor or Airco may elect to have the dispute determined by arbitration under this Part II. If the arbitrators shall determine that such refusal by Airco was by reason of an aforementioned refusal to purchase by the distributor, Airco may nevertheless refuse to sell industrial gases or other welding products to such distributor if it is determined by the arbitrators that (a) such refusal was not in reprisal for the distributor's election to purchase industrial gases elsewhere than from Airco and (b) there was no commercially advantageous and less restrictive alterna-

tive available to Airco enabling Airco to market in the distributor's market area such industrial gas or gases purchased by the distributor from other sources.

In making such determinations, the arbitrators (i) shall consider, among other facts they deem relevant and to the extent they deem relevant, the current and prior relationship and course of business between Airco and the distributor and between Airco and other distributors; other practical business alternatives open to Airco; the present and future effect of the refusal to sell by Airco on other Airco distributors; and Airco's goals as to market participation and profitability; (ii) shall be guided by applicable law as to issues raised and (iii) shall not regard as itself dispositive but shall consider their conclusion (if they do so conclude) that Airco's said refusal to sell would not have occurred but for the earlier refusal to purchase by the distributor.

B. Unless otherwise agreed to by the parties, arbitration shall be held by three arbitrators and at a location in the United States designated by the distributor and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrators shall be final and binding on both parties. The arbitrators shall, upon a proper showing, issue protective orders and/or receive evidence *in camera* in the same manner as an administrative law judge of the Federal Trade Commission. In the event of a default by either party in appearing before the arbitrators, the arbitrators are authorized to render a decision, pursuant to advance written notice, upon the testimony of the party appearing.

C. Airco will not refuse to sell to any distributor eligible to invoke arbitration under this Part II without providing 60 days written notice to the distributor (a "discontinuance notice"). Any demand by a distributor for arbitration shall be delivered by notice in writing to Airco within 60 days of receipt of a discontinuance notice. Any demand by Airco for arbitration shall be effective upon notice to the distributor. Where arbitration has been demanded by either party, Airco may not refuse to sell the product referred to in the discontinuance notice to such distributor pending the decision of the arbitrators. The arbitrators shall render their decision within 120 days from the date of demand for arbitration and shall have the mandate to impose a time schedule for briefing, argument, presentation of evidence and the like to permit such time limit to be observed. The costs other than attorneys' fees shall be shared equally by the distributor and by Airco if Airco is the successful party in the arbitration and solely by Airco if the distributor prevails, unless in the course of arbitration it is determined by the arbitrators that either of the parties did not act in

good faith, in which event that person not acting in good faith shall bear all such costs.

D. The distributor's right to arbitration shall be clearly set forth in any distributor agreements that Airco shall enter into with its distributors.

E. As soon as feasible and in any event within 10 days after receipt by Airco of a distributor's demand for arbitration under this Part II, or simultaneously with transmittal by Airco of an arbitration demand to a distributor, Airco shall notify the Commission of such demand and the nature of the dispute. Airco shall also notify the Commission of the names of the arbitrators and the dates of the arbitration hearings within 10 days of the time known. The Commission may at its election intervene as friend of the arbitrators, and present evidence, engage in argument and submit briefs.

If Airco shall initiate arbitration hereunder, then the Commission may, in its sole discretion, at any time before any evidence has been taken suspend the provisions of this Part II respecting such arbitration. Airco will, if arbitration was initiated by it, on demand, provide the Commission with reasonable information for it to determine whether to suspend arbitration proceedings. If the Commission elects to suspend the provisions of Part II, Airco will not effect its refusal to sell to the distributor for at least 120 days from the date of receipt of the Commission of Airco's arbitration demand. In order for the Commission to have time to assess its possible courses of action pursuant to this order, the arbitrators shall not commence the taking of evidence prior to 60 days from the date of receipt at the office of the Commission of notification of such arbitration demand or such earlier time as to which the Commission may agree.

F. If the distributor shall prevail in the arbitration, then Airco shall enter into an appropriate contractual relationship in conformity with this order.

G. The Commission will not assert any claim that Airco has violated this order based merely upon the subject matter of any dispute arbitrated hereunder unless Airco has failed to comply with the award of the arbitrators in such dispute.

H. If in any arbitration under Part II the distributor prevails but elects not to be reinstated or continued as an Airco distributor as to products covered by the arbitration, then the following shall apply if the distributor so elects in writing delivered within 30 days of the date of the arbitration award.

If the distributor shall have had furnished to him by Airco more than 50% in dollar value (determined at the time of the distributor's said election based upon the then replacement cost) of cylinders of all kinds

used in its industrial gases business, whether the furnishing thereof by Airco has been by lease, rental, demurrage, loan or any other arrangement in which ultimate ownership has been retained by Airco, then Airco agrees it will, at the distributor's election, sell all or any part of such cylinders belonging to it and used by the distributor to the distributor at a price which is the greater of the average of the book value on the books of Airco of such cylinders of like kind or 85% of the replacement value thereof. Airco further agrees that it will finance the sale to the distributor of such cylinders in a transaction calling for payment of principal and interest over a 10-year period, at an interest rate equivalent to that currently prevailing in financial circles for similar risks.

III

It is further ordered:

That for a period of twenty (20) years from the date of service of this order, Airco shall not, either directly or indirectly through subsidiaries in which Airco owns a majority interest, (i) lease or otherwise make available to customers of any distributor who has ceased purchasing one or more Airco industrial gases within the preceding two years, industrial gas cylinders at rental or demurrage rates set for the purpose of destroying a competitor or eliminating competition, or (ii) lease or otherwise make available to competitors of any distributor who has ceased purchasing one or more Airco industrial gases within the preceding two years, industrial gas cylinders at rental or demurrage rates lower than the standard rental or demurrage rate for such cylinders then in effect for Airco industrial gas distributors for the purpose of destroying a competitor or eliminating competition; *provided, however*, that if either a standard cylinder rental rate schedule to Airco industrial gas distributors or a standard cylinder demurrage rate schedule to such distributors, but not both, is in effect, then, for the purpose of this Part III, one shall be deemed to be equivalent to the other on the basis of the revenue that would be generated by a single cylinder during a two-month period of continuous usage, rounded to the nearest cent; and *provided, further*, that for the purpose of this Part III, a standard cylinder rental or demurrage rate shall be a rate which is available to all Airco industrial gas distributors; and *provided, further*, that the purpose of destroying a competitor or eliminating competition must be established by proof of intent on the part of Airco to destroy the industrial gas business of, or eliminate as a competitor, a distributor who has ceased to distribute one or more Airco industrial gases; and evidence that Airco has engaged in price competition with

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such distributor or that Airco intends to seek or obtain the trade of particular customers then being served by such distributor shall not, by itself, be sufficient to establish such intent; and *provided, further*, that Airco may set rental or demurrage rates for customers or competitors of such distributor lower than those in effect for Airco industrial gas distributors in good faith response to competitive conditions in the area served by such distributor; and *provided, still further*, that Airco shall have all defenses which would be available in law, including, but not limited to, the defenses of meeting competition and cost justification.

IV

It is further ordered:

That if provisions of the consent order entered against Union Carbide Corporation on September 28, 1977 in settlement of a proceeding in FTC Docket No. C-2902 similar to provisions of this order, are hereafter modified or revoked, then Airco may apply to the Commission for modification of, or relief from, any such provisions in this order, and upon such application the Commission shall grant such modification or relief in the provisions of this order covered by such application as is necessary to conform such provisions in this order with the modified provisions of such Union Carbide consent order.

V

It is further ordered:

That Airco shall within twenty-one (21) days after service upon it of this order forward a copy of this order and the complaint issued herein, along with a copy of the attached letter (Attachment A) on respondent's official company stationery and signed by a responsible official of Airco to distributors of Airco industrial gases and/or welding products.

VI

It is further ordered:

That Airco notify the Commission at least thirty (30) days prior to any proposed changes in corporate structure of Airco such as dissolution, assignment or sale resulting in the emergence of a successor corporation, which may affect compliance obligations arising out of the order.

VII

It is further ordered:

That Airco 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 in which it has complied with this order, and shall file such other reports as may from time to time be required to assure compliance with the terms and conditions of this order.

ATTACHMENT A

(LETTERHEAD OF AIRCO, INC.)

Date:

Dear -----:

Airco has entered into a consent order with the Federal Trade Commission which obligates the company not to impose certain restrictions upon its distributors* of industrial gases* and welding products* or to engage in certain other practices. A copy of the consent order is attached. In brief, Airco has agreed not to require the purchase by any Airco distributor of any industrial gas at any location* as a condition of his being permitted to buy any other gas, or to buy the same gas at another location, or to buy any welding product, and will not refuse to sell a particular gas or welding product to an Airco distributor because he discontinues buying another product from Airco.

Airco has also agreed not to enforce any provisions of any existing contracts for the purchase of industrial gases or welding products which are inconsistent with the consent order. As a consequence, your present single contract with us covering your requirements* for all the industrial gases you now buy from us may now be treated by you as a group of identical but separate contracts, each covering your requirements for one industrial gas. These contracts may be terminated by you for all the products you buy, or separately for particular products or for any specific location, upon prior written notice to us of not less than 90 days (even though your contract may provide for a longer notice) effective at the next anniversary date under your existing contract, or if the anniversary date falls within 90 days of the date hereof, then 90 days after such notice.

Within six months of the date* of this letter, Airco will submit to you a new form of supply contract consistent with the consent order discussed above. If you terminate any existing contract, you will be offered this new contract in its place. In any event, the new contract will replace all current contracts as soon as our commitments with our respective distributors permit us to effect the substitution, and we will issue appropriate notices of termination to our distributors at the time we circulate the new form of contract.

Finally, your attention is called to the provisions of Part II of the order giving you the right to arbitrate certain disputes which you might have with Airco as to Airco's right to discontinue dealing with you because you have elected to purchase industrial gases from another supplier.

* The terms "industrial gases," "welding products," "distributor," "requirements" and "location" are defined in the enclosed order.

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If in the future, you believe that any of the terms of the enclosed consent order have been violated, you may report the details in writing to:

Federal Trade Commission
Bureau of Competition
Washington, D.C. 20580

Very truly yours,

(Name and Title of
Responsible Official)
Airco, Inc.

IN THE MATTER OF
PENDLETON WOOLEN MILLS, INC.

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

Docket C-2985. Complaint, July 31, 1979 — Decision, July 31, 1979

This consent order, among other things, requires a Portland, Ore. manufacturer of wool products to cease fixing, maintaining, or enforcing resale prices for its products; soliciting the identity of dealers who fail to conform to such prices; and taking adverse action against recalcitrants. Respondent is also prohibited from restricting the use of product trademarks or other identification in the sale or advertising of such products; and barred from suggesting retail prices for any product until April 20, 1982.

Appearances

For the Commission: *Jeffrey Klurfeld.*

For the respondent: *James H. Clarke and William Lubersky, Spears, Lubersky, Campbell & Bledsoe, Portland, Oregon.*

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

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

“Product” is defined as any item which is manufactured, offered for sale or sold by respondent. Product shall not include any item which Jacques deLoux, Inc. manufactures or purchases from any third party, and which it sells to any person, partnership, corporation or firm other than to respondent.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

PARAGRAPH 1. Respondent Pendleton Woolen Mills, Inc. is a corpora-

tion organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 218 S. W. Jefferson St., Portland, Oregon.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of wearing apparel for men, women and children, blankets and wool fabric. Sales by respondent for fiscal year 1978 exceeded \$40 million.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sells and distributes its products directly to more than 5,000 retail dealers located throughout the United States who in turn resell respondent's products to the general public.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale and distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold and distributed by respondent.

PAR. 6. 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 United States, the purpose or effect of which is and has been to fix, control, establish, manipulate and maintain the resale prices at which its dealers advertise, offer for sale and sell its products.

PAR. 7. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by its dealers. To carry out said practice or policy, respondent adopted and employed, and still employs, the following means and methods among others:

(a) It requires prospective dealers as a condition of becoming dealers, and requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that they will sell products at prices suggested by respondent.

(b) It requires prospective dealers as a condition of becoming dealers, and requires dealers as a condition of remaining dealers, to enter into

oral agreements or understandings with respondent, or to give oral assurances to respondent, that, in the event they sell any product at less than respondent's suggested retail price, they will not identify such product in any advertisement as having been manufactured by respondent.

PAR. 8. By means of the aforesaid acts and practices and more, respondent, in combination, agreement, understanding and conspiracy with certain of its dealers and with the acquiescence of other of its dealers, has established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which products will be resold.

PAR. 9. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's products, and, thus, are to the prejudice and injury of the public, and 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. The acts and practices of respondents, 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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The 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 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 Pendleton Woolen Mills, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 218 S.W. Jefferson St., in the City of Portland, State of Oregon.

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:

“Product” is defined as any item which is manufactured, offered for sale or sold by respondent. Product shall not include any item which Jacques deLoux, Inc. manufactures or purchases from any third party, and which it sells to any person, partnership, corporation or firm other than to respondent.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

It is ordered, That respondent Pendleton Woolen Mills, Inc., a corporation, its successors and assigns, and respondent's 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 product in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

1. Fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

2. Establishing, exacting any assurance to comply with, continuing, enforcing, or announcing the terms of any contract, agreement, understanding, or arrangement with any dealer which fixes, establishes, maintains or enforces, directly or indirectly, the resale price at which any product is to be sold or advertised.

3. Securing or attempting to secure any promise or assurance from

any dealer regarding the resale price at which such dealer will or may advertise or sell any product, or requiring or requesting any dealer to obtain approval from respondent for any resale price at which such dealer may or will advertise or sell any product.

4. Requiring, requesting, or soliciting any dealer to report the identity of any other dealer, because of the price at which such dealer is advertising, offering to sell or selling any product; or acting on any reports or information so obtained by threatening, intimidating, coercing or terminating any dealer.

5. Conducting any surveillance program to determine whether any dealer is advertising, offering for sale or selling any product at a resale price other than that which respondent has established or suggested, where such surveillance program is conducted to fix, maintain, control or enforce the retail price at which any product is sold or advertised.

6. Terminating or taking any other action to restrict, prevent, or limit the sale of any product by any dealer because of the resale price at which said dealer has sold or advertised, is selling or advertising, or is suspected of selling or advertising any product.

7. Restricting any dealer who has purchased any product which bears any of respondent's trademarks or identifications affixed thereto from using any trademark or other identification so affixed in the sale or advertising of such product.

II

Publishing, disseminating, circulating, providing or communicating, orally or in writing or by any other means, any suggested retail price from the date of service of this order until April 20, 1982; *provided, however*, that if, after April 20, 1982, respondent suggests any retail price, respondent shall:

a. Clearly and conspicuously state on any material on which such suggested price is stated that such price is suggested only.

b. Mail to all dealers a letter stating that no dealer is obligated to adhere to any suggested retail price and that such suggested retail price is advisory only.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present accounts. An affidavit shall be sworn to by an official of respondent verifying that the attached Exhibit A was so mailed.

2. Mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to any person, partnership, corporation or firm that becomes a new account within three (3) years after service of this order.

IV

It is further ordered, That the respondent shall forthwith distribute a copy of this order to all operating divisions of said corporation, and to present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

V

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

VI

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

EXHIBIT A

Dear Retailer:

Pendleton Woolen Mills, without admitting any violation of the law, has agreed to the entry of an order by the Federal Trade Commission regulating certain distribution practices. In connection therewith, the company has agreed to send you this letter describing the order.

The order provides, among other things, as follows:

1. You can advertise and sell Pendleton products at any price you choose.
2. Pendleton will not take any action against you, including termination, because of the price at which you advertise or sell its products.
3. Pendleton will not suggest retail prices for any product until April 20, 1982.
4. The price at which you sell or advertise our products will not affect your right to use Pendleton trademarks or other identification in your sale or advertising of products bearing Pendleton trademarks or identification.

If you have any questions regarding the order or this letter, please call Mr. Pedley at Pendleton.

for Pendleton Woolen Mills, Inc.

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IN THE MATTER OF
MACK TRUCKS, INC.

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

Docket C-2978. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires an Allentown, Pa. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *Daniel K. Mayers, Wilmer, Cutler & Pickering, Wash., D.C.*

COMPLAINT

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

PARAGRAPH 1.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that

model class is identified, or may according to company policy, be identified as being of that model year:

1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent Mack Trucks, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 2100 Mack Boulevard, Allentown, Pennsylvania.

PAR. 3. Respondent Mack Trucks, Inc. is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent Mack Trucks, Inc. causes the said motor vehicles, after manufacture, to be transported from its place of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent, Mack Trucks, Inc., maintains, and at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business respondent designates and at all times mentioned herein, had designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealers returned and have returned to it Certificates of Origin and other documents for unsold vehicles. Respondent then "re-designates" and has "re-designated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sale of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representations constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuance by respondent of Certificates of Origin and other documents containing said false, misleading and deceptive representations concerning the model years of vehicles as described in Paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations made concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all

times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mack Trucks, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 2100 Mack Boulevard, Allentown, Pennsylvania.

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

ORDER

It is ordered, That respondent, Mack Trucks, Inc., a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year, or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation of representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards takes effect, and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants,

all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

provided, however, that nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on:

(i) Certificates or Statements of Origin for such vehicles, or

(ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or

(iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not

designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

- a. are not titled or registered, and
- b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or
2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after each such standard becomes final;

provided, however, that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage

manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and
- b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and
- c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

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

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

IN THE MATTER OF
CHRYSLER CORPORATION

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

Docket C-2979. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires a Highland Park, Mich. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *Matten B. Maher, Highland Park, Mich.*

COMPLAINT

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

PARAGRAPH 1.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that model class is identified, or may according to company policy, be identified as being of that model year:

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1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent Chrysler Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 12000 Oakland Ave., Highland Park, Michigan.

PAR. 3. Respondent Chrysler Corporation is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent Chrysler Corporation causes the said motor vehicles, after manufacture, to be transported from its place of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent Chrysler Corporation maintains, and at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business, respondent designates and at all times mentioned herein, had designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealers returned and have returned to it Certificates of Origin and other documents for unsold vehicles. Respondent then "redesignates" and

has "redesignated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sale of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representations constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuance by respondent of Certificates of Origin and other documents containing said false, misleading and deceptive representations concerning the model years of vehicles as described in Paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations made concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and

individuals in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Chrysler Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 12000 Oakland Ave., Highland Park, 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

It is ordered, That respondent Chrysler 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 manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of any such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants,

all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title registration, which contain a space for model year designation, or

b. requires a model year designation on:

- (i) Certificates or Statements of Origin for such vehicles, or
- (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or
- (iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. shall provide a space on such certificates preceded by the word "model year" or "year," and

b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. are not titled or registered, and

b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. shall provide a space on such certificates preceded by the word "model year" or "year," and

b. shall denote in such space either "N.A." or "Not Applicable" or "none" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final; *provided, however,* that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an

Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and
- b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and
- c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

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

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

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IN THE MATTER OF
FORD MOTOR COMPANY

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

Docket C-2980. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires a Dearborn, Mich. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *Stewart M. Weiner, Dearborn, Mich.*

COMPLAINT

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

PARAGRAPH 1.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that model class is identified, or may according to company policy, be identified as being of that model year:

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1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent Ford Motor Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at The American Road, Dearborn, Michigan.

PAR. 3. Respondent Ford Motor Company is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent Ford Motor Company causes the said motor vehicles, after manufacture, to be transported from its places of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent Ford Motor Company maintains, and at all times mentioned herein, has maintained, a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business respondent designates and at all times mentioned herein, has designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealer returned and have returned to it Certificates of Origin and other documents for unsold vehicles. Respondent then "redesignates" ar

has "redesignated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sale of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representations constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuance by respondent of Certificates of Origin and other documents containing said false, misleading and deceptive representations concerning the model years of vehicles as described in paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations made concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and

individuals in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ford Motor Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at The American Road, Dearborn, 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

It is ordered, That respondent Ford Motor 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 manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year, or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation of representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants,

all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

provided, however, that nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on:

(i) Certificates or Statements of Origin for such vehicles, or

(ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing the title or registration by such vehicles, or

(iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. shall provide a space on such certificates preceded by the word "model year" or "year," and

b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. are not titled or registered, and

b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. shall provide a space on such certificates preceded by the word "model year" or "year," and

b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and
2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after each such standard becomes final;

Provided, however, that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and
- b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and
- c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

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

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

Complaint

IN THE MATTER OF

PACCAR, INC.

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

Docket C-2981. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires a Bellevue, Wash. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *John S. Voorhees, Howrey & Simon, Washington, D.C.*

COMPLAINT

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

PARAGRAPH 1.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that

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model class is identified, or may according to company policy, be identified as being of that model year:

1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent Paccar, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Business Center Building, 777 106th Ave., N.E., Bellevue, Washington.

PAR. 3. Respondent Paccar, Inc. is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent Paccar, Inc. causes the said motor vehicles, after manufacture, to be transported from its places of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent Paccar, Inc. maintains, and at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business, respondent designates and at all times mentioned herein, has designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealers returned and have returned to it Certificates of Origin and other documents for unsold vehicles. Respondent then "re-designates" and has "re-designated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sales of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representation constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuance by respondent of Certificates of Origin and other documents, containing said false, misleading and deceptive representations concerning the model years of vehicles as described in Paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations made concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all

times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Paccar, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Business Center Building, 777 106th Ave., N.E., Bellevue, Washington.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Paccar, Inc., a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year, or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation of representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may

be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

provided, however, That nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles, or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on:

- (i) Certificates or Statements of Origin for such vehicles, or
- (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing the title or registration of such vehicles, or
- (iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not

designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

- a. are not titled or registered, and
- b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or
2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and

copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after each such standard becomes final;

provided, however, that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and
- b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

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

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

Complaint

94 F.T.C.

IN THE MATTER OF

WHITE MOTOR CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2982. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979*

This consent order, among other things, requires an Eastlake, Ohio manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

*Appearances*For the Commission: *Paul Sailer.*For the respondent: *Edward Green, Eastlake, Ohio.*

COMPLAINT

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

PARAGRAPH 1.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that model class is identified, or may according to company policy, be identified as being of that model year:

1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent White Motor Corporation 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 35129 Curtis Boulevard, Eastlake, Ohio.

PAR. 3. Respondent White Motor Corporation is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent White Motor Corporation causes the said motor vehicles, after manufacture, to be transported from its places of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent, White Motor Corporation, maintains, and at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business, respondent designates and at all times mentioned herein, has designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealers returned and have returned to it Certificates of Origin and other

documents for unsold vehicles. Respondent then "redesignates" and has "redesignated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sale of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representations constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuances by respondent of Certificates of Origin and other documents containing said false, misleading and deceptive representations concerning the model years of vehicles as described in Paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations made concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reasons of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and

individuals in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, and were and all are to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent White Motor Corporation 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 35129 Curtis Boulevard, Eastlake, 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

It is ordered, That respondent, White Motor 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 manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year, or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation of representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants,

all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

provided, however, that nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles, or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on:

- (i) Certificates or Statements of Origin for such vehicles, or
- (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing the title or registration of such vehicles, or
- (iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

- a. are not titled or registered, and
- b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or
2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after each such standard becomes final;

provided, however, that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

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

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

IN THE MATTER OF
INTERNATIONAL HARVESTER COMPANY

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

Docket C-2983. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires a Chicago, Ill. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *J.R. Fruchterman, Chicago, Ill.*

COMPLAINT

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

PARAGRAPH 1.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that model class is identified, or may according to company policy, be identified as being of that model year:

1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent International Harvester is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 401 North Michigan Ave., Chicago, Illinois.

PAR. 3. Respondent International Harvester is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent, International Harvester, causes the said motor vehicles, after manufacture, to be transported from its place of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent, International Harvester, maintains, and at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business respondent designates and at all times mentioned herein, has designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealers returned and have returned to it Certificates of Origin and other documents for unsold vehicles. Respondent then "re-designates" and

has "redesignated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sale of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representations constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuances by respondent of Certificates of Origin and other documents containing said false, misleading and deceptive representations concerning the model years of vehicles as described in Paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations were concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reasons of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and

individuals in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, and were and all are to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent International Harvester Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 401 North Michigan Ave., Chicago, Illinois.

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

ORDER

It is ordered, That respondent International Harvester 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 manufacture, advertising, offering for sale, sale or distribution of trucks, trucktractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year, or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation of representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants,

all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

provided, however, that nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on:

- (i) Certificates or Statements of Origin for such vehicles, or
- (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing the title or registration of such vehicles, or
- (iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

- a. are not titled or registered, and
- b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or
2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after each such standard becomes final;

provided, however, that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an

Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and
- b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and
- c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

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

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

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IN THE MATTER OF

WOODLAND MOBILE HOMES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS WARRANTY
ACTS

Docket C-2984. Complaint, Aug. 3, 1979 — Decision, Aug. 3, 1979

This consent order, among other things, requires a Santa Rosa, Calif. seller of mobile homes and other consumer products and its affiliate, Woodland Mobile Homes, Inc. of Nevada, to cease failing to make available to prospective buyers, prior to purchase, the text of written warranties offered for their products as required by federal regulations.

Appearances

For the Commission: *Harold G. Sodergren.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act ("Warranty Act") and the implementing Rule Concerning the Pre-Sale Availability of Written Warranty Terms (16 CFR 702 (1977)) (effective January 1, 1977) ("Pre-Sale Rule") duly promulgated on December 31, 1975 [40 F.R. 60189] pursuant to Title I, Section 109 of the Warranty Act (15 U.S.C. 2309) (a copy of the Pre-Sale Rule is marked and attached as Appendix A* and is incorporated herein by reference as if fully set forth verbatim), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Woodland Mobile Homes, Inc., and Woodland Mobile Homes, Inc. of Nevada, corporations, and Allan Borgia, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and Pre-Sale Rule, 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 Woodland Mobile Homes, Inc. is a corporation organized, existing and doing business under and by virtue

* Not reproduced herein for reasons of economy.

of the laws of the State of California. Its principal office and place of business is located at 333 South E St., Santa Rosa, California.

Respondent Woodland Mobile Homes, Inc. of Nevada, an affiliate of Woodland Mobile Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada. Its principal office and place of business is located at 440 Gentry Way, Reno, Nevada.

Respondent Allan Borgia is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of said Woodland Mobile Homes, Inc.

PAR. 2. Respondents have been, and are now, engaged in the advertising, offering for sale, and sale of mobile homes to the public.

PAR. 3. In the course and conduct of their business, respondents offer for sale and sell to consumers, consumer products distributed in commerce as "consumer product", "consumer", and "commerce" are defined by Sections 101(1), 101(3), 101(13) and 101(14), respectively, of the Warranty Act.

PAR. 4. Subsequent to January 1, 1977, respondents, in the course and conduct of their business, have offered for sale and sold mobile homes and other consumer products costing the consumer in excess of \$15.00, many of which are warranted by the manufacturer. Respondents are, therefore, sellers as "seller" is defined in Section 702.1(e) of the Pre-Sale Rule.

PAR. 5. In connection with the offering for sale and sale of mobile homes and other consumer products, respondents have failed, as required by Section 702.3(a) of the Pre-Sale Rule, to make the text of the written warranties available for prospective buyers' review prior to sale through one or more of the following methods:

(a) Clearly and conspicuously displaying the text of the written warranty in close conjunction to each warranted product;

(b) Maintaining a warranty binder system which is readily available to the prospective buyers, along with conspicuous signs indicating the availability and identifying the location of binders when the binders are not prominently displayed;

(c) Displaying the package of the consumer product on which the text of the written warranty is disclosed in such a way that the warranty is clearly visible to prospective buyers at the point of sale; and

(d) Placing a sign which contains the text of the written warranty in close proximity to the product to which it applies.

PAR. 6. Respondents' failure to comply with the Pre-Sale Rule as

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described in Paragraph Five of this complaint is a violation of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, and the Rule Concerning the Pre-Sale Availability of Written Warranty Terms promulgated under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 Woodland Mobile Homes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 333 South E St., Santa Rosa, California.

Respondent Woodland Mobile Homes, Inc. of Nevada is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Nevada, with its office and principal place of business located at 440 Gentry Way, Reno, Nevada.

Respondent Allan Borgia is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of said Woodland Mobile Homes, Inc.

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

ORDER

I

DEFINITIONS

For the purposes of this order the definitions of the terms "consumer product," "warrantor," and "written warranty" as defined in Section 101 of the Warranty Act shall apply. The definition of the term "binder" as defined in Section 702.1(g) of the Pre-Sale Rule shall apply.

II

It is ordered, That respondents Woodland Mobile Homes, Inc., and Woodland Mobile Homes, Inc. of Nevada, corporations, their successors and assigns, and their officers, and Allan Borgia, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of mobile homes or other consumer products, do forthwith cease and desist from:

1. Failing to make available in respondents' display area for prospective buyers' review prior to sale, the text of any written warranties offered or granted by the manufacturers of mobile homes and consumer products sold by respondents.

With respect to mobile homes, "display area" means a prominent location inside each mobile home.

2. Maintaining a binder or series of binders to satisfy the requirements of Paragraph 1, above, unless such binder or binders are located in each mobile home being displayed for sale by respondents, and such binder or binders include at least one copy of each written warranty applicable to the mobile home and the consumer products contained in the mobile home.

In utilizing any such binder or binders respondents shall:

- (a) provide prospective buyers with ready access thereto; and
- (b) (1) display such binder(s) in a manner reasonably calculated to elicit the prospective buyers' attention; or
- (2) (i) make such binder(s) available to prospective buyers on request; and
- (ii) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within each mobile home, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access; and
- (c) index such binder(s) according to product or warrantor; and
- (d) clearly entitle such binder(s) as "Warranties" or other similar title.

III

It is further ordered, That respondents post, in a prominent location in each mobile home being displayed for sale, a sign, two feet (length) by two feet (width), reasonably calculated to elicit prospective buyers' attention, which contains a verbatim reproduction of the following language:

IMPORTANT!

NOT ALL WARRANTIES ARE THE SAME

We provide warranties for you to compare before you buy

Please ask to see them

Check: Full or limited?

What costs are covered?

What do you have to do?

Are all parts covered?

How long does the warranty last?

Such sign shall be posted for a period of not less than three years from the effective date of this order. The language in such sign shall be unencumbered by other written or visual matter, shall be indented and punctuated as indicated in this paragraph, above, and shall be printed in black against a solid white background, as follows:

a. The word "Important" shall serve as the title of the notice and shall be printed in capital letters in 42 point boldface type followed by an exclamation mark.

b. The next phrase shall be printed on a separate line in capital letters and in 42 point boldface type.

c. The next two phrases shall be printed on separate lines and in 36 point medium face type.

d. Each succeeding phrase shall be printed on a separate line and in 24 point medium face type.

IV

1. *It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future employees, salespersons, agents, independent contractors, and other representatives of respondents engaged in the sale of mobile homes or consumer products on behalf of respondents, and secure a signed statement acknowledging receipt of the order from each such person.

2. *It is further ordered,* That respondents instruct all present and future employees, salespersons, agents, independent contractors, and other representatives of respondents, engaged in the sale of mobile homes or other consumer products on behalf of respondents, as to their specific obligations and duties under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. Law 93-637, 15 U.S.C. 2301, *et seq.*), all present and future implementing Rules promulgated under the Act, and this order.

3. *It is further ordered,* That respondents institute a program of continuing surveillance to reveal whether respondents' employees, salespersons, agents, independent contractors, or other representatives are engaged in practices which violate this order.

4. *It is further ordered,* That respondents maintain complete records for a period of not less than three (3) years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any of respondents' employees, salespersons, agents, independent contractors, or other representatives. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the individual involved, the date of the communication and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission during normal business hours upon reasonable advance notice.

5. *It is further ordered,* That respondents maintain, for a period of not less than three (3) years from the effective date of this order, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of their continuing compliance with all the terms and provisions of this order.

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

other change in the corporate respondents which may affect compliance obligations arising out of this order.

7. *It is further ordered*, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

IN THE MATTER OF
THE DINERS CLUB, INC., ET AL.

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

Docket C-2884. Complaint, April 22, 1977 — Decision, Aug. 10, 1979*

This amended order modifies an April 22, 1977 consent order issued against National Account Systems, Inc. (NAS), its owner, The Diners Club, Inc. (Diners), and three NAS subsidiaries, by including Payco American Corporation (Payco) as a respondent. Payco, who has purchased NAS and its subsidiaries from Diners, has agreed, upon transfer of interest, to assume Diners' obligations under the amended order, although Diners would still be bound by the provision prohibiting the use of independent agents or other entities to circumvent any term of the amended order.

Appearances

For the Commission: *Kenneth H. Donney.*

For the respondents: *Frank C. Christl, Gendel, Raskoff, Shapiro & Quittner, Los Angeles, Calif.*

DECISION AND ORDER

The Diners Club, Inc. and Payco American Corporation, by a petition filed April 3, 1979, withdrawing a petition filed by The Diners Club, Inc. on July 19, 1978, request, pursuant to Rule 3.72(b)(2) of the Commission's Rules of Practice, that the Commission reopen these proceedings and modify the order to cease and desist against Diners Club, Inc., *inter alia*, which has become final.

The staff of the Los Angeles Regional Office has filed an answer to the petition to reopen and modify. In the answer, it is stated that the staff joins with The Diners Club, Inc. and Payco American Corporation in urging that the order to cease and desist be modified by the Commission. The Director of the Bureau of Consumer Protection concurs with this recommendation.

In the complaint in this case issued by the Commission on April 22, 1977, Diners Club, Inc. was named as a respondent in that it was the parent corporation of National Account Systems, Inc. The complaint did not allege that Diners Club, Inc. engaged in any unlawful practices. The order required Diners Club, Inc. to be financially responsible for any civil penalties assessed and prohibited Diners Club, Inc. from knowingly using independent agents or other entities to circumvent

* Complaint previously published at 89 F.T.C. 282.

the provisions of the order. Diners Club, Inc. was specifically not bound by the substantive provisions of the order set forth in Parts I, II and III.

The Diners Club, Inc. has entered into a letter agreement dated June 22, 1978, to sell National Account Systems, Inc. and its subsidiaries, to Payco American Corporation. The petition requests that Payco American Corporation be substituted for Diners Club, Inc. insofar as financial liability might accrue for civil penalties assessed against any respondent in this case other than Diners Club, Inc. The acquisition was consummated on March 30, 1979, subject to certain conditions subsequent, including the approval of this petition by the Commission.

Moreover, in order to assure the Commission that its order will be fully and faithfully followed, Payco American Corporation has also agreed to be a respondent in this case insofar as Part IV of the order, including, but not limited to, the prohibition against knowingly using independent agents of other entities to circumvent the provisions of the order. It is also requested that Part IV of the order be modified to describe The Diners Club, Inc. as the former owner of National Account Systems, Inc.

In view of the willingness of Payco American Corporation, as the new parent of National Account Systems, Inc. to undertake the same responsibilities under the order as The Diners Club, Inc., and in view of the fact that The Diners Club, Inc. will remain as a respondent for the purpose of effectuating Part IV of the order, it is determined by the Commission that it is in the public interest to modify the order as requested. Accordingly,

It is ordered, That the proceedings be, and they hereby are, reopened, and the order to cease and desist heretofore issued in this case be, and they thereby are, modified to read as follows:

1. Respondent National Account Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of Payco American Corporation.

Respondent NAS Creditors Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent National Account Systems of Milwaukee, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago,

Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent A. B. Hartman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent The Diners Club, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 10 Columbus Circle, New York, New York. The Diners Club, Inc., is joined as a respondent in that it was the sole owner of National Account Systems, Inc., and will be liable for civil penalty as provided in Section IV, herein.

Respondent Payco American Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 2401 North Mayfair Road, Milwaukee, Wisconsin 53226. Payco American Corporation is joined as a respondent in that it is the sole owner of National Account Systems, Inc., having purchased all of the stock of that corporation from The Diners Club, Inc., and will be liable for civil penalty as provided in Part IV herein in the event that any named respondent except The Diners Club, Inc. violates any of the provisions of Part IV of the order after it becomes final or in the event that National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., or A. B. Hartman, Inc., violate any of the other provisions of the order after it becomes final.

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

ORDER

National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., for the purposes of Parts I, II, and III of this amended order are the only parties to whom reference is made when the term "respondents" is used.

Liability of The Diners Club, Inc. for civil penalty resulting from violations of this amended order shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the provisions of Part IV of this amended order after it becomes final and before the transfer of interests set

forth and described in the Amended Agreement Containing Amended Consent Order to Cease and Desist in accordance with the terms of which this amended order has been issued, or violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the other provisions of this amended order after it becomes final and before such transfer of interests; or violations by it of any of the provisions of the first paragraph of Part IV of the amended order after it becomes final and after such transfer of interests. Liability of Payco American Corporation for civil penalty resulting from violation of this amended order shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the provisions of Part IV of this amended order after it becomes final and after such transfer of interests, or violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the other provisions of this amended order after it becomes final and after such transfer of interests. If the aforesaid transfer of interests shall fail to be consummated on or before June 30, 1979, then this amended order shall thereupon be deemed to be null and void, and the order originally issued in this proceeding shall be deemed to have theretofore and thereafter been in full and continuous force and effect.

I

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device in connection with the collection of or attempting to collect consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Obtaining information on consumers from a consumer reporting agency or any other source under false pretenses.
2. Failing to keep accurate records of the sources of all information obtained on all consumers.
3. Retaining on respondents' premises any books, pamphlets, or any other writings or materials containing subscriber codes or any information which would enable respondents to use subscriber codes unless respondents or their employees or agents are:

- (a) Members of a consumer reporting agency; and
- (b) Authorized to possess and use such codes; such authorization must expressly include collecting or attempting to collect debts for respondents and such authorization must be maintained in respondents' files.

Any such codes or information currently in respondents' possession or which subsequently come into respondents' possession and are not permitted as required in (a) and (b) must be destroyed or returned to the authorized user and a record kept of such action for three years, making such record available to the Federal Trade Commission for inspection and copying upon request.

4. Representing in any manner, directly or by implication, orally or in writing, that respondents have the authority or right to cause debtors to go to jail or to be defendants in criminal prosecutions for not paying their debts; or misrepresenting in any manner respondents' authority to affect debtors' legal rights or liabilities.

5. Representing in any manner, directly or by implication, orally or in writing, that respondents are serving legal or judicial documents upon debtors unless such is the case; or misrepresenting in any manner the status, significance or official nature of any papers sent to debtors.

6. Representing in any manner, directly or by implication, orally or in writing, that respondents or their agents are something or someone other than a debt collection agency or debt collector; or misrepresenting in any manner the official, professional or vocational status of respondents or their agents, or misrepresenting, in any manner, the position or function of any of respondents' agents, employees, and representatives.

7. Representing in any manner, directly or by implication, orally or in writing, that respondents will destroy or attempt to harm debtors' credit standings, or that respondents possess the authority or intend to disclose information regarding debtors to a consumer reporting agency; or misrepresenting in any manner the effect of any action taken by respondents on a debtor's credit standing.

8. Representing in any manner, directly or by implication, orally or in writing, that legal action has been initiated or is being initiated unless respondents have in fact instituted the legal action represented; or misrepresenting in any manner that legal action will be initiated, including but not limited to, attachment or garnishment proceedings, unless respondents are able to establish that, at the time the representation was made, respondents intended in good faith to institute the legal action represented.

9. Representing in any manner, directly or by implication, orally or

in writing, that judgment may be entered against a debtor without the debtor having notice of the legal action and an opportunity to appear and defend himself or herself in a court of law.

10. Informing a debtor of a creditor's post judgment rights without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself or herself in a court of law.

11. Representing in any manner, directly or by implication, orally or in writing, the post judgment rights of a creditor unless said rights are in fact as specifically represented in the jurisdiction in which collection is sought; or misrepresenting in any manner, directly or by implication, the post judgment rights of a creditor.

12. Using abusive or obscene language when talking with or writing to debtors.

13. Placing any telephone call to any debtor, or orally contacting debtors in any manner, between the hours, in the time zone of the debtor, of 9:00 p.m. and 7:00 a.m. on weekdays, including Saturdays, and between the hours of 9:00 p.m. and 12:00 noon on Sundays.

14. Initiating more than two (2) oral conversations with any debtor in any one week regarding the collection of the same debt.

It is further ordered, That respondents, their successors and assigns, with respect to oral or written communications to persons other than the alleged debtor, cease and desist from:

(a) Communicating or threatening to communicate, or implying the fact or existence of any debt to a debtor's employer prior to any judgment;

(b) Communicating with or threatening to communicate, or implying the fact or existence of any debt to any other third parties, including former employers of the debtor other than one who might be reasonably expected to be liable therefor except with the written permission of the debtor or except where legal documents are being served according to law;

(c) Reporting a debt or an alleged debt to a consumer reporting agency unless respondents also promptly report to said consumer reporting agency the subsequent payment of said debt or alleged debt, or the resolution of any dispute concerning said debt, or alleged debt.

It is further ordered, That said respondents shall maintain for a period of three (3) years with respect to each debtor, records which shall consist of copies of all collection letters, dunning notices, requests for information and similar correspondence delivered to such debtor or third parties, or any indication of what items or documents were sent; a record or tabulation of all telephone calls made to or about the debtor

showing the identity of the caller, the date of the call, the telephone number called, the purpose and result of the call and any notes or reports made in connection therewith when obtained; and copies of all documents pertaining to collection efforts such as referrals to lawyers or other agencies and legal documents utilized in collection efforts, or any indication of what items were sent.

II

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device, in connection with any consumer credit transaction, including, but not limited to, transactions involving the deferment of the payment of debts and/or the refinancing of any existing extension of credit or the increasing of existing obligations, as these terms are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act [15 U.S.C. 1601-65 (1970), *as amended*, 15 U.S.C. 1601-65(a), (Supp. IV, 1974)], do forthwith cease and desist from:

1. Failing to disclose the finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, expressed and identified as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. Failing to disclose the date on which the finance charge begins to accrue, as required by Section 226.8(b)(1) of Regulation Z.
3. Failing to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments" as is required by Section 226.8(b)(3) of Regulation Z.
4. Failing to disclose the total amount of finance charges, with a description of each amount included, using the term "finance charge", as required by Section 226.8(d)(3) of Regulation Z.
5. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
6. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
7. Failing to make the disclosures required by Section 226.8 of

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

8. Failing in any consumer credit transaction to make all disclosures, required by Sections 226.6, 226.7, 226.8, and 226.9 of Regulation Z, and failing to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, and 226.9 of Regulation Z.

III

It is further ordered, That:

(a) Respondents shall deliver a copy of this amended order to all present and future employees and their agents engaged in debt collection and to any other person or entity connected with respondents to whom respondents presently refer or assign and to whom in the future respondents may refer or assign matters for debt collection;

(b) Respondents shall provide each of their employees with a form returnable to respondents clearly stating the employee's intention to conform his or her business practices to the requirements of this amended order; respondents shall require said persons to agree in writing on said form to conform his or her business practices to the requirements of this amended order and shall retain said statement during the period said person is so engaged, and for three (3) years thereafter, and make said statement available to representatives of the Federal Trade Commission for inspection and copying upon request;

(c) In the event such person will not agree to sign and file the form set forth in paragraph (b) above with respondents and conform to the provisions of this amended order, respondents shall not use or engage or continue the use or engagement of such person to collect debts or aid or assist respondents in the collection of debts;

(d) Respondents shall inform each person and entity described in paragraph (a) above that respondents shall not use or engage or shall terminate the use or engagement of any such person or entity unless such person or entity's business practices conform to the requirements of this amended order; and that respondents are obligated by this amended order to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this amended order;

(e) Respondents shall institute a program of reasonable surveillance of their officers, employees and their agents engaged in debt collection, adequate to reveal whether the business practices of each said person conform to the requirements of this amended order;

(f) Upon receiving information from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) indicating reasonable proof of a violation of any provision of this amended order by any person or entity described in paragraph (a) above, respondents shall within 72 hours notify such person or entity by certified mail, return receipt requested, that such violation of this amended order has occurred ("Termination Notice"), and that respondents shall forthwith discontinue dealing with said person or entity. Immediately after such notification, respondents shall permanently discontinue dealing with said person or entity;

(g) Respondents shall retain evidence of compliance with this amended order and all Termination Notices and make such evidence available to representatives of the Federal Trade Commission for inspection and copying upon request;

(h) Respondents shall prepare and maintain a list of all employees containing the names of all such persons and their aliases, if any, and their last known addresses and telephone numbers for three (3) years following the date of their last employment with respondents; such list shall be made available to representatives of the Federal Trade Commission for inspection and copying upon request.

IV

It is further ordered, That respondents National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, Payco American Corporation, a corporation, and The Diners Club, Inc., a corporation, the former owner of the stock of National Account Systems, Inc., hereinafter referred to as respondents, shall not use independent agents or other entities knowingly for the purpose of circumventing any provision of this amended order.

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

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

It is further ordered, That no provision of this amended order shall

be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with more restrictive agreements, orders or directives of any kind obtained by any other governmental agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this amended order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

IN THE MATTER OF
SCHERING-PLOUGH CORPORATION

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

Docket C-2986. Complaint, Aug. 10, 1979 — Decision, Aug. 10, 1979

This consent order, among other things, requires a Kenilworth, N.J. manufacturer of various drugs, including athlete's foot products, to divest, within one year, the assets acquired as a result of its acquisition of Scholl, Inc. and utilized by Scholl primarily for the manufacture, distribution or sale in the United States of Solvex athlete's foot products. Additionally, the order requires the company to furnish the acquirer with specified assistance, and prohibits the firm, for ten years, from acquiring any business engaged in the manufacture, sale or distribution of athlete's foot products.

Appearances

For the Commission: *Geoffrey Walker.*

For the respondent: *Edward Wolfe, White & Case, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, subject to the jurisdiction of the Commission, has acquired Scholl, Inc., a corporation, 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. DEFINITION

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

1. "Athlete's foot products" means nonprescription fungicidal or fungistatic pharmaceutical products manufactured, distributed or sold primarily for the treatment of athlete's foot (*tinea pedis*).

II. RESPONDENT

2. Schering-Plough Corporation (Schering-Plough) is a corporation organized, existing and doing business under and by virtue of the laws

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of the State of New Jersey with its principal office and place of business at 2000 Galloping Hill Road, Kenilworth, New Jersey.

3. In 1977, Schering-Plough had consolidated sales which amounted to \$940.8 million.

4. Schering-Plough is a diversified company which manufactures and markets, on a worldwide basis, principally, ethical pharmaceuticals and proprietary medicines, cosmetics, toiletries and household products. In 1977, Schering-Plough sold approximately \$212.9 million worth of drugs through pharmacies and was the eighth largest supplier to pharmacies of ethical and proprietary drugs.

5. Schering-Plough is the largest manufacturer of athlete's foot products in the United States, with 1977 sales in the United States of approximately \$12.8 million.

6. At all times relevant herein, respondent has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and engaged in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III. ACQUISITION AGREEMENT

7. On August 9, 1978, Schering-Plough entered into a letter agreement with Scholl, Inc. providing for Schering-Plough to acquire Scholl, Inc. and to merge Scholl, Inc. into a subsidiary of Schering-Plough. The merger was consummated on April 2, 1979. The transaction is valued at more than \$127.4 million.

IV. TARGET CORPORATION

8. Scholl, Inc., (Scholl) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 213 West Schiller St., Chicago, Illinois. At the time of acquisition, Scholl was engaged primarily in the manufacture and sale of foot and leg care products, shoes and footwear and adhesive products.

9. In 1977, Scholl had net sales of \$216.4 million. Scholl is the fourth largest manufacturer of athlete's foot products in the United States, with 1977 sales of approximately \$1.5 million.

10. At all times relevant herein, Scholl has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and engaged in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

V. TRADE AND COMMERCE

11. For the purposes of this complaint, the relevant product market

is the manufacture and sale of athlete's foot products and the relevant geographic market is the United States.

12. Athlete's foot products are used primarily to treat dermatophytosis of the foot, tinea pedis.

13. Sales of athlete's foot products in the United States are substantial, in 1977, amounting to \$30 million.

14. Schering-Plough and Scholl are and have been for many years substantial and actual competitors in the manufacture and sale of athlete's foot products.

15. At the time of the acquisition agreement, Schering-Plough and Scholl ranked approximately first and fourth respectively, in total sales of athlete's foot products; Schering-Plough accounted for more than 40 percent and Scholl accounted for an estimated 5 percent of total sales of such products.

16. The athlete's foot products market is concentrated. In 1977, the four top firms accounted for more than 80 percent of sales in the United States.

17. Entry into the manufacture and sale of athlete's foot products is difficult, requiring significant financial resources, sophisticated technological skills, quality control and effective marketing and distribution.

VI. EFFECTS OF ACQUISITION: VIOLATIONS CHARGED

18. The effect of the acquisition of Scholl by respondent may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of athlete's foot products in the United States in violation of the Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

a. Actual and potential competition between respondent and Scholl in the manufacture and sale of athlete's foot products has been eliminated;

b. Actual competition between competitors generally in the manufacture and sale of athlete's foot products may be lessened;

c. Scholl as a substantial, independent competitive factor in the manufacture and sale of athlete's foot products has been eliminated;

d. The leading position of respondent in the manufacture and sale of athlete's foot products may be further entrenched;

e. Concentration in the manufacture and sale of athlete's foot products will be maintained or increased, and the possibility of deconcentration may be diminished;

f. Existing barriers to new entry may be increased substantially;

- g. Additional acquisitions and mergers in the industry may be encouraged;
- h. Independent manufacturers and sellers of athlete's foot products may be deprived of a fair opportunity to compete with the combined resources and market position of respondent and Scholl;
- i. Members of the consuming public may be deprived of the benefits of free and unrestricted competition in the manufacture and sale of athlete's foot products.

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 Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton and Federal Trade Commission Acts; 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 Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Schering-Plough Corporation 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 2000 Galloping Hill Road, in the town of Kenilworth, State of New Jersey.
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 purpose of this order, the following definitions shall apply:

A. "Solvex" means the *Solvex* trademark registered under the Lanham Act or any predecessor federal statute. The term "Solvex" does not include any rights, title or interest in the name or trademark *Dr. Scholl's* or Scholl or in any distinctive packaging associated with the name Scholl or with any Scholl product.

B. "Athlete's foot products" means nonprescription fungicidal or fungistatic pharmaceutical products manufactured, distributed or sold primarily for the treatment of athlete's foot (*tinea pedis*).

I

It is ordered, That, subject to the prior approval of the Federal Trade Commission, respondent Schering-Plough, through its officers, directors, agents, representatives, employees, subsidiaries, affiliates, divisions, successors and assigns, shall, within one (1) year from either the date Schering-Plough acquires Scholl or service of this order, whichever occurs later, divest the assets, tangible and intangible, acquired, improved or added by respondent as a result of its acquisition of Scholl and utilized by Scholl primarily for the manufacture, distribution or sale in the United States of Solvex athlete's foot products. Such assets shall include all raw material reserves, inventory, machinery, equipment, trade names, trademarks, patents, licenses, research and development projects, good will and other property of whatever description.

II

It is further ordered, That, at the option of the acquirer (the option to be exercised at the time of the contract), Schering-Plough shall assist the acquirer in the manufacture, distribution or sale of athlete's foot products so that they are comparable in quality to the Solvex products manufactured by Scholl at the time of the acquisition by respondent, in one or more of the following ways:

A. Schering-Plough shall provide acquirer with Scholl's formulations, specifications and manufacturing procedures, including Scholl's quality control standards and methods, relating to such Solvex products;

B. Schering-Plough shall provide the acquirer with all of Scholl's written know-how and scientific research data relating to athlete's foot products;

C. For no longer than three (3) years from the date of the contract

with the acquirer, Schering-Plough shall provide the acquirer, at reasonable cost, with the assistance of such technical and production personnel as may be necessary in establishing or expanding the acquirer's facility for the production of such Solvex products; and

D. Schering-Plough shall use its best efforts to assist the acquirer in obtaining raw materials required to manufacture such Solvex products; *provided, however*, that nothing in this provision shall require Schering-Plough (1) to participate in, to guarantee or to stand behind any financial arrangement between the acquirer and the suppliers of raw materials, or (2) to furnish any such materials except as specifically provided elsewhere herein.

E. Schering-Plough shall provide the acquirer with all Scholl's Solvex customer lists, sales and promotional materials, proprietary market research materials (except for materials from A.C. Nielsen Co. and Towne-Oller and Associates, Inc. that are subject to a contractual agreement not to disclose) and sales training materials and devices relating thereto.

F. As an interim measure, pending the establishment or expansion of the acquirer's manufacturing capability and for no longer than three (3) years from the date of the contract with the acquirer, Schering-Plough shall agree to supply the acquirer, at reasonable cost, with its bulk requirements of products the same or similar to those manufactured by Scholl in the United States under the Solvex trademark at the time of the acquisition by respondent.

III

It is further ordered, That, until all the requirements of Paragraph I of this order have been accomplished, Schering-Plough, its subsidiaries, affiliates, divisions, successors and assigns, shall not take any action which diminishes the value of the products or other assets, tangible or intangible, that are subject to this order or which in any way impairs Schering-Plough's ability to comply with the requirements of this order; *provided, however*, that nothing in this provision shall prohibit or prevent Schering-Plough, its subsidiaries, affiliates, divisions, successors or assigns, from competing in the manufacture, distribution or sale of athlete's foot products.

IV

It is further ordered, That, pursuant to the requirements of Paragraph I of this order, none of the assets, property, rights or privileges, tangible or intangible, acquired or added by respondent shall be divested, directly or indirectly, to anyone who is at the time of

divestiture an officer, director, employee or agent of, or under the control, direction or influence of, respondent or its subsidiaries or affiliated corporations, or who owns or controls more than one (1) percent of the outstanding shares of the capital stock of the respondent.

V

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, or until June 30, 1989, whichever occurs first, Schering-Plough, its subsidiaries, affiliates, divisions, successors and assigns, shall not acquire directly or indirectly, without prior approval of the Federal Trade Commission, any stock, share capital, actual or potential equity interest or right of participation in the earnings of any concern, corporate or non-corporate, engaged in, or the assets of any concern relating to, the manufacture, distribution or sale in the United States of athlete's foot products; *provided, however,* that nothing in this paragraph shall require prior approval of the merger of Scholl into any subsidiary of Schering-Plough or other reorganization of Schering-Plough or its subsidiaries, affiliates and divisions.

VI

It is further ordered, That Schering-Plough shall, within sixty (60) days after the date of service upon it of this order, and every sixty (60) days thereafter until Schering-Plough has fully complied with Paragraph I of this order, and annually thereafter for the duration of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Schering-Plough intends to comply, is complying or has complied with this order. All compliance reports shall include, among other things that are from time to time required, a summary of contacts or negotiations with anyone for the assets, property, rights and privileges specified in Paragraph I of this order, the identity of all such persons, and copies of all written communications between such persons and Schering-Plough.

VII

It is further ordered, That Schering-Plough shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate identity of Schering-Plough, 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.

Modifying Order

IN THE MATTER OF

UNION CARBIDE CORPORATION — DOCKET C-2557
 HERCULES INCORPORATED — DOCKET C-2558
 FMC CORPORATION — DOCKET 8961

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

Modifying Orders, Aug. 13, 1979

This order reopens proceedings and modifies the 1975 consent orders entered against Union Carbide Corporation, (86 F.T.C. 1231, Dec. 2, 1975); Hercules Incorporated, (86 F.T.C. 1236, Dec. 2, 1975); and FMC Corporation, (86 F.T.C. 897, Oct. 8, 1975), by deleting provisions requiring companies to include in their advertising a general warning statement apprising users that pesticides can be harmful unless used as directed.

ORDER REOPENING AND MODIFYING CEASE AND DESIST ORDERS

In petitions filed during March, April, and May 1978, and supplementary papers filed in June 1978, the Union Carbide Corporation (Union Carbide), Hercules Incorporated (Hercules), and FMC Corporation (FMC) requested the Commission, pursuant to Section 3.72(b)(2) of its Rules of Practice, to reopen the proceedings and modify orders entered in Dkt. Nos. C-2557, C-2558, and 8961. Respondents seek relief from provisions in those orders which require specified warning statements to be included in subject advertising. The provisions at issue read as follows:¹

It is further ordered, That respondent. . ., its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from disseminating or causing the dissemination of:

A. Any print advertising or print promotional material which contains any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes in such print advertising or print promotional material the following statement:

STOP! ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

B. Any broadcast advertisement more than 30 seconds in length which contains any

¹ The contested provisions appear as Section IV of the modified Union Carbide order (86 F.T.C. 1231, 1233-34 (1975)), Section III of the modified Hercules order (86 F.T.C. 1236, 1238-39 (1975)), and Section III of the FMC order (86 F.T.C. 897, 903-04 (1975)). Hercules also seeks deletion of the last full paragraph of Section IV of its order and Union Carbide urges the excision of the reference to Section IV which appears in Section III of its order.

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use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

C. Any broadcast advertisement of 30 seconds or less in length which contains any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL. READ THE LABEL. USE AS DIRECTED.

Provided, That in television advertisements not more than 10 seconds in length which contain no direct representations concerning product safety, the requirements of the term "clearly and conspicuously" shall in all cases be met by including the above statement in the video portion of the advertisement.

Provided, however, That for purposes of enforcing Paragraph III of this order any advertisement, statement, claim or representation that such products may be employed for a crop or plant use registered under FIFRA, or any other approved use based upon evidence filed in connection with registration under FIFRA shall not be deemed sufficient to require the disclosure of any statement otherwise required under the provisions of Paragraph III: *Provided further*, That this exception shall be limited to advertisements which promote the respondent's corporate image, which only incidentally promote the sale or distribution of such products and which are published or disseminated for publication by respondent's corporate headquarters' officers in conjunction with respondent's other nonpesticide products.²

Respondents' petitions would not disturb the prohibitory provisions of the orders.

Section 3.72(b)(2) of the Commission's Rules of Practice, 16 C.F.R. 3.72(b)(2), permits the filing of petitions to reopen proceedings whenever a party subject to a final rule or order "is of the opinion that changed conditions of fact or law require that said rule or order be altered, modified, or set aside, or that the public interest so requires. . . ." Petitioners have advanced a number of considerations intended to illustrate such "changed conditions" and to demonstrate the public interest in modification. They allege changed conditions of fact or law in the Commission's failure to promulgate a trade regulation rule concerning pesticide advertising, in the amendment of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and more comprehensive regulations issued pursuant thereto by the Environmental Protection Agency (EPA), and in recent Commission staff findings about pesticide consumers. As public interest factors for modification, respondents cite the competitive disadvantage (and presumably consequent consumer harm) which they claim compliance

² The *Provided, however* paragraph is not included in the Union Carbide order and the last part of the *Provided further* sentence, beginning with the words "and which are published. . . ." does not appear in the Hercules order.

forces upon them, the lack of necessity for the warning statement, and the possibility if not likelihood of confusion to the public from inclusion on some pesticide products of dual warnings, one mandated by the FTC and the other by the EPA.

Having considered the petitions and supporting papers and the staff's answer thereto, the Commission has concluded that the petitions should be granted and that the unmodified provisions of the orders will be sufficient to safeguard the public interest, particularly in light of the Commission's 1977 announcement that it would continue to monitor pesticide advertising closely and to deal with law violations on a case-by-case basis. In reaching its conclusion, the Commission has taken into account the 1972 FIFRA amendments and subsequent EPA regulatory activity, the dramatic decline in absolute safety advertising which had provided the impetus for the warning statement requirement, the findings of greatly increased consumer sophistication with regard to the hazards of pesticide products, the decrease in pesticide-related fatalities, and the possibility of the warning's creating a burden upon competition. The Commission's determination does not, however, signify acceptance of petitioners' contentions that the Commission decision not to promulgate a pesticide advertising TRR either constitutes a change in fact or law or represents the failure of any sort of implied condition precedent to these orders. Therefore,

It is ordered, That these matters be reopened for the limited purpose requested and that the following modifications be made:

In Dkt. No. C-2557, change the words "I, II, and IV" in Section III of the cease and desist order to "I and II," and delete Section IV of the order.

In Dkt. No. C-2558, delete Section III of the cease and desist order, change the words "I, II, and III" to "I and II" in the first paragraph of Section IV of the order, and delete the second paragraph of Section IV.

In Dkt. No. 8961, delete Section III of the cease and desist order.

It is further ordered, That the foregoing modifications shall become effective upon service of this order.

Commissioner Pitofsky did not participate.

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IN THE MATTER OF

KORVETTE'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS WARRANTY
ACTS*Docket C-2987. Complaint, Aug. 16, 1979 — Decision, Aug. 16, 1979*

This consent order would require a New York City department store chain, among other things, to cease failing to provide its stores with statutorily required warranty material; and to make the terms of written warranties on consumer products available to prospective purchasers prior to sale. The firm is further required to develop and implement a program to instruct its sales personnel about the availability and location of warranty information; and maintain adequate business records for a period of two years.

*Appearances*For the Commission: *Stewart McCloud.*For the respondent: *Charles Meyers, New York City.*

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act and Rule 702 (16 C.F.R. 702) promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Korvette's, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty 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. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. Law 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 C.F.R. 702) promulgated thereunder, shall apply to the terms used in this complaint.

PAR. 2. Respondent Korvette's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 450 West 33rd St., New York, New York.

PAR. 3. Respondent is now and has been engaged in the operation of a chain of department stores throughout the United States. Its volume of business has been and is substantial. In the operation of its

department stores, respondent is now and has been distributing, advertising, offering for sale and selling among other items, appliances, including but not limited to household appliances, radios, stereos, and televisions which are consumer products. Therefore, respondent is both a supplier and seller of consumer products.

PAR. 4. Respondent, in the course and conduct of its aforesaid business, now causes and has caused consumer products to be distributed in commerce.

PAR. 5. The Federal Trade Commission, pursuant to Title I, Section 109 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2309, has duly promulgated on December 31, 1975 [40 F.R. 60189] the Rule concerning the Pre-Sale Availability of Written Warranty Terms (16 C.F.R. 702 (1977)), effective January 1, 1977. A copy of the Rule* is marked and attached as Appendix A, and is incorporated in this complaint by reference as if fully set forth verbatim.

COUNT I

Alleging violations of the Magnuson-Moss Warranty Act and the implementing rule promulgated under that Act, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Five are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 6. In the ordinary course and conduct of its aforesaid business, respondent regularly offers and has offered written warranties on consumer products. Therefore, respondent is a warrantor of consumer products.

PAR. 7. In the further course and conduct of its business as warrantor of consumer products actually costing more than \$15.00 respondent has failed to provide its department stores with the warranty materials required by 16 C.F.R. 702.3(b)(1) which are necessary for such stores to comply with the requirements for sellers of consumer products as set forth in 16 C.F.R. 702.3(a).

PAR. 8. Respondent's failure to comply with the provisions of 16 C.F.R. 702 constituted and now constitutes a violation of the Magnuson-Moss Warranty Act and, pursuant to Section 110(b) thereof, an unfair or deceptive practice under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), as amended.

COUNT II

Alleging violations of the Magnuson-Moss Warranty Act and the

* Not reproduced herein for reasons of economy.

implementing rule promulgated under that Act, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Five are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 9. In the ordinary course and conduct of its aforesaid business, respondent regularly sells or offers for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondent is a seller of consumer products.

PAR. 10. On or after January 1, 1977, respondent, in the ordinary course of its aforesaid business as a seller of consumer products actually costing more than \$15.00 and manufactured on or after January 1, 1977 has failed to make the terms of written warranties available to the consumer prior to sale through utilization of one or more of the methods required by 16 C.F.R. 702.3(a)(1) by:

- A. Clearly and conspicuously displaying the text of the written warranty in close conjunction with the product;
- B. Maintaining a binder system readily available to the consumer along with conspicuous signs noting the location of binders where the binders themselves are not in plain view;
- C. Displaying the warranty package in such a way that the text of the warranty is visible; and
- D. Placing a sign with the warranty terms in close proximity to the product.

PAR. 11. Respondent's failure to comply with the provisions of 16 C.F.R. 702 constituted and now constitutes a violation of the Magnuson-Moss Warranty Act and, pursuant to Section 110(b) thereof, an unfair or deceptive practice under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), as amended.

APPENDIX A

COMPARE WARRANTIES BEFORE YOU BUY!

There's a binder with warranties in this department. If you can't find the warranty binder, ask for it.

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 New York 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, the Magnuson-Moss Warranty Act, and the Pre-Sale Availability Rule promulgated thereunder; 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 Acts and Rule, 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 Korvette's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 West 33rd St., in the City of New York, State of New York.

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

ORDER

The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. Law 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 C.F.R. 702.1) promulgated thereunder shall apply to the terms in this order.

I

It is ordered, That respondent Korvette's, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly through any corporation, subsidiary, division or any other device in connection with its business as a seller and warrantor of consumer products distributed in commerce as "seller", "warrantor", and "consumer product" are defined in Rule 702 (16 C.F.R. 702.1) of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) do forthwith cease and desist from:

Decision and Order

94 F.T.C.

A. Failing, in the further course and conduct of its business as warrantor of consumer products actually costing more than \$15.00, to provide its department stores with the warranty materials required by 16 C.F.R. 702.3(b)(1) which are necessary for such stores to comply with the requirements for sellers of consumer products, as set forth in 16 C.F.R. 702.3(a).

B. Failing, in its course of business as a seller of consumer products, to make the terms of written warranties on consumer products actually costing more than \$15.00 and manufactured on or after January 1, 1977, available to the consumer prior to sale through utilization of one or more means specified in 16 C.F.R. 702.3(a)(1).

II

It is further ordered, That for those departments in which respondent chooses to use a binder system to comply with seller's duties under 16 C.F.R. 702.3(a), respondent shall:

A. Maintain a permanently affixed binder system in each such department which provides the consumer with ready access; and either

B. Label and display such binders in a manner reasonably calculated to elicit the consumer's attention and accessible for consumer use without the assistance of store personnel; or

C. Place permanently affixed signs, not smaller than 8-1/2 inches by 11 inches advising the consumer of the availability of the binders, in a prominent location in each such department. The content of these permanently affixed signs is included in this order as Appendix A.

III

It is further ordered, That respondent shall:

A. Deliver a copy of this order to cease and desist to all present regional and store managerial employees engaged in the sale of consumer products on behalf of respondent.

B. Instruct all present and future regional and store managerial employees engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and under this order relating to the requirements about the availability and location of warranty information for customers.

C. Develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

D. Maintain, for a period of not less than two (2) years from the effective date of the order, adequate business records to be furnished

upon request to the staff of the Federal Trade Commission, relating to the manner and form of its continuing compliance with the terms and provisions of this order.

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

F. 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.

APPENDIX A

COMPARE WARRANTIES BEFORE YOU BUY!

There's a binder with warranties in this department. If you can't find the warranty binder, ask for it.

Complaint

94 F.T.C.

IN THE MATTER OF
HOWARD JOHNSON COMPANY

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

Docket C-2988. Complaint, Aug. 16, 1979 — Decision, Aug. 16, 1979

This consent order requires a Boston, Mass. restaurant chain, among other things, to cease requiring its licensees to purchase food products, or other products or services from the company, or from particular sources. The firm is additionally required to cancel or delete from its franchising agreements all provisions which fail to conform with the terms of the order.

Appearances

For the Commission: *Harold F. Moody* and *Joanne M. Neale*.

For the respondent: *Walter W. Curcio*, Boston, Mass. and *Malcolm D. Perkins, Herrick & Smith*, Boston, Mass.

COMPLAINT

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

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

“Ice cream products” means ice cream, ice milk, sherbert, ice cream cake, ice cream pie, frostee, thick shake mix, frozen yogurt, and yogurt mix;

“Food products” means all foodstuffs; including, but not limited to, syrups and toppings, condiments, candy, bakery products, dry mixes, processed foods, raw and prepared meats, fish and poultry, chowders, gravies, soups and ice cream products; and

“Howard Johnson’s” restaurant means a restaurant operated by Howard Johnson Company or its licensee under the trademark “Howard Johnson’s.”

PAR. 2. Respondent Howard Johnson Company is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Maryland, with its principal office and place of business located at One Howard Johnson Plaza, Boston, Massachusetts.

PAR. 3. Respondent is now and has been engaged in the franchising or licensing of persons with respect to the operation of "Howard Johnson's" restaurants bearing, among others, the registered trademarks and service marks "Howard Johnson's," "Host of the Highways," "Landmark for Hungry Americans," "Someone You Know Wherever You Go," the distinctive Howard Johnson's roof and cupola, and the unregistered trade name "The Flavor of America." There are approximately 253 licensed "Howard Johnson's" restaurants located throughout the United States and Puerto Rico. Respondent also owns and operates approximately 645 "Howard Johnson's" restaurants throughout the United States.

Respondent is engaged in the manufacture and preparation of food products other than ice cream products, at several plant locations in Massachusetts, Florida, New York, and Pennsylvania, and in the distribution of said food products from distribution centers located in California, Florida, Georgia, Illinois, Maryland, Massachusetts, Ohio, Pennsylvania, and Texas. Respondent is also engaged in the manufacture and distribution of ice cream products from ice cream plants located in Massachusetts, Maryland, Florida, and Illinois. These food products are furnished to "Howard Johnson's" restaurants operated by the respondent and sold to licensed "Howard Johnson's" restaurants.

Respondent reported gross sales of approximately \$600 million by company-operated "Howard Johnson's" restaurants during the inclusive period of time from August 30, 1975 through September 30, 1977, and sales by licensed "Howard Johnson's" restaurants for 1976 of approximately \$100 million. Sales of food and supplies by respondent to its licensees totaled approximately \$55 million for the inclusive period of time from August 30, 1975 through September 30, 1977.

PAR. 4. In the course and conduct of respondent's business of licensing the use of the "Howard Johnson's" trademarks, service marks and trade names, both registered and unregistered, and of manufacturing and selling food products, respondent causes and has caused its food products to be shipped from distribution centers and manufacturing plants located in various states to both company owned and licensed "Howard Johnson's" restaurants located in various other states. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been lessened by reason of the practices hereinafter alleged, respondent is in substantial

competition with other persons, firms and corporations engaged in the manufacture and sale at wholesale of food products, the sale of food products at retail to the public, and the licensing of trademarks, trade names, and service marks for use in connection with restaurant businesses in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended. Licensees of "Howard Johnson's" restaurants are in substantial competition with respondent, with one another, and with other firms, persons and corporations engaged in the sale of food products at retail to the public in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. In the course and conduct of its business, respondent has engaged in and is continuing to engage in the following unfair methods of competition and unfair acts and practices, among others, enumerated in this paragraph:

1. For several years, at least since September 1975, respondent has pursued a plan or policy, the purpose of which is to require that "Howard Johnson's" restaurant licensees purchase from respondent a substantial portion of the food products used by the licensees in their restaurant business.

2. In furtherance of this plan or policy, respondent has included and continues to the present time to include in its Operator's Agreements provisions requiring that "Howard Johnson's" restaurant licensees purchase from respondent a substantial portion of the food products sold to the licensees' restaurant customers.

PAR. 7. The above acts and practices have the capacity and tendency to lessen competition with the following effects, among others:

1. "Howard Johnson's" restaurant licensees are required to purchase from respondent a substantial portion of their requirements of food products, including their total requirements of approximately 170 food products enumerated in the respondent's Operator's Agreement.

2. Competition between respondent and other suppliers of such food products has been lessened.

PAR. 8. The aforesaid acts and practices of the respondent have the tendency to unduly hinder competition, have lessened actual and potential competition, and thus are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

The respondent, 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 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 Howard Johnson Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at One Howard Johnson Plaza, in the City of Boston, Commonwealth of Massachusetts.

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

ORDER

I

DEFINITIONS

For the purposes of this order the following definitions shall apply: "Ice cream products" means ice cream, ice milk, sherbert, ice cream

cake, ice cream pie, frostee, thick shake mix, frozen yogurt and yogurt mix;

"Food products" means all foodstuffs, including, but not limited to, syrups and toppings, condiments, candy, bakery products, dry mixes, processed foods, raw and prepared meats, fish and poultry, chowders, gravies, soups and ice cream products; and

"Howard Johnson's" restaurant means a restaurant operated by Howard Johnson Company or its licensee under the trade name "Howard Johnson's."

It is ordered, That Howard Johnson Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with its operation of a food manufacturing business and franchising or licensing of persons to operate a "Howard Johnson's" restaurant business, do forthwith cease and desist from requiring in any manner or by any means, directly or indirectly, its licensees to purchase food products (with the exception of the products listed in Appendix A attached hereto which are manufactured by Howard Johnson Company itself) or any other products or services from respondent or from any other source.

Provided, that nothing in this order shall prohibit respondent from establishing reasonable and uniform standards of manufacture, specifications, recipes or formulae for products sold or used in its licensed restaurants, if such standards, specifications, recipes or formulae are made available without charge to manufacturers desiring to produce products for "Howard Johnson's" restaurant licensees pursuant to them. Furnishing of standards, specifications, recipes or formulae may be made subject to assurance of confidential treatment by those to whom they are provided.

Provided further that if, subsequent to the date on which this order becomes final, respondent wishes to present to the Commission any reasons why the provisions of this order should not apply to any other product manufactured by respondent, it shall submit to the Commission a written statement setting forth said reasons and shall not require licensees to purchase said product from Howard Johnson Company or any other source without the prior approval of the Federal Trade Commission.

II

It is further ordered, That respondent herein shall, within thirty (30) days after service upon it of this order, mail or deliver a copy of this order to each of its operating divisions and to each of its present

officers, and shall secure a signed statement acknowledging receipt of said order from each such entity or person.

III

It is further ordered, That respondent herein shall, within thirty (30) days after service upon it of this order, mail or deliver a copy of this order to each present licensee under cover of the letter annexed hereto as Appendix B, and furnish the Commission proof of mailing thereof.

IV

It is further ordered, That the respondent shall within thirty (30) days after service upon it of this order, take all necessary action to effect the cancellation or deletion of each provision of every contract or agreement between respondent and any of its "Howard Johnson's" restaurant licensees which is contrary to, or inconsistent with, any provision of this order.

V

It is further ordered, That 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 or any other change in the corporation which may affect compliance obligations arising out of the order.

VI

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.

APPENDIX A

Syrups and Toppings

Chocolate syrup, Fudge and Butterscotch topping

Ice Cream Products

(Ice cream, ice milk, sherbert, ice cream cake, ice cream pie, frostee, thick shake mix, frozen yogurt and yogurt mix.)

Bakery Products

Coconut Layer Cake, Fudge Layer Cake, Apple, Blueberry, Cherry, Peach, Pecan and Squash Pies, Brownies, Chocolate Chip Cookies, Corn and Blueberry Toastees.

Prepared Foods

Beef Burgundy, Beef Stroganoff, Chicken Pie, Clam Chowder

Other

Frying Clams, Frankforts

Candy in Howard Johnson's trademark packages or wrappers. [Licensee is free to purchase candy from other sources in whatever quantity it chooses provided it is not identified as "Howard Johnson's".]

APPENDIX B

(Howard Johnson Company Letterhead)

Dear Sir/Madame:

Howard Johnson Company has entered into an agreement with the Federal Trade Commission relating to the company's policy requiring that licensees purchase certain food products only from the company. A copy of the consent order entered into pursuant to that agreement is attached hereto.

Howard Johnson Company has entered into this agreement solely for settlement purposes, and the agreement and consent order are not to be construed as an admission by Howard Johnson's that it has violated any of the laws administered by the Commission, or that any of the allegations of the complaint are true and correct. Instead, the order merely relates to the activities of the company in the future.

The consent order prohibits Howard Johnson Company from requiring you to purchase from it food products (other than those products which are manufactured by Howard Johnson Company and listed in Appendix A attached to the order) or any other products or services. Therefore, the products listed in Appendix A are the only food products you are required to purchase from Howard Johnson Company, and any provisions of your license agreement requiring you to purchase other food products from Howard Johnson Company or any other source are hereby deleted and cancelled.

Howard Johnson's retains the right to establish reasonable standards of manufacture, reasonable specifications or reasonable recipes or formulae for products sold in Howard Johnson's restaurants operated by licensees. The company will supply any standards, specifications, recipes or formulae so established, without cost, to other manufacturers who may desire to sell the products to Howard Johnson's licensees.

Sincerely,

Howard B. Johnson
Chairman of the Board and President
Howard Johnson Company