

Complaint

IN THE MATTER OF

J. D. GRAMM, INC., ET AL.

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

Docket C-2363. Complaint, March 14, 1973—Decision, March 14, 1973.

Consent order requiring a Hialeah, Florida, personal income tax preparation service, among other things to cease representing that each customer's tax return carries an unconditional or unlimited guarantee of accuracy; misrepresenting the training and ability of respondent's employees; representing that respondent offers an auditing service; and representing that respondent's representatives are engaged in the income tax business on a full time, year round basis.

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 J.D. Gramm, Inc., a corporation, and David Goldberg and Virginia M. Goldberg, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent J.D. Gramm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 461 Hialeah Drive, Hialeah, Florida.

Respondents David Goldberg and Virginia M. Goldberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of personal income tax preparation services to the general public.

Respondents sell their aforesaid tax preparation services directly and through various affiliates and franchisees, hereinafter referred to for convenience as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other income tax preparation services, to be sent by United States mail from respondents' place of business in the State of Florida to their local offices and franchises and purchasers of respondents' tax preparation services located in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents and their representatives have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. In the course and conduct of respondents' business and for the purpose of inducing the purchase of said income tax preparation returns or services, respondents have made or caused to be made numerous statements and representations in newspaper and television advertisements.

Typical and illustrative of said statements made in respondents' newspaper and television advertisements, but not all inclusive thereof, are the following:

We do all the figuring. Fill in all your forms with guaranteed accuracy at the lowest possible tax.

He makes sure there are no mistakes—in fact, he guarantees it. Accuracy and satisfaction guaranteed as on all Gramm returns.

\$2.50 will put the income tax expert on your side.

Your return will be prepared by a highly experienced member of our audit staff.

Visit one of the many J. D. Gramm offices near you. It's their business all year long.

Mr. Gramm is around all year. 49 Great Offices to serve you throughout Florida.

Gramm's full time year round business is income tax.

PAR. 6. By and through the use of the above quoted statements and representations, and others of similar import and meaning,

but not expressly set out herein, respondents and their representatives have represented, and are now representing, directly or by implication, that:

1. Each customer's tax return prepared by respondents or their representatives carries a guarantee of accuracy without conditions or limitations.

2. Respondents' and their representatives' tax preparing personnel are specially trained and are unusually competent in the preparation of all tax returns, or that they have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Respondents offer an auditing service and have on their staff tax preparing personnel who verify tax information submitted by their customers for tax preparation purposes.

4. All of respondents' representatives are engaged in the income tax business full time on a year round basis.

PAR. 7. In truth and in fact:

1. Each customer's tax return prepared by respondents or their representatives does not carry a guarantee of accuracy without conditions or limitations.

2. Respondents' and their representatives' tax preparing personnel are not specially trained and are not unusually competent in the preparation of all tax returns and they do not have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Respondents do not offer an auditing service nor do they have on their staff tax preparing personnel who verify tax information submitted by their customers for tax preparation purposes.

4. All of respondents' representatives are not engaged in the income tax business full time on a year round basis. Many of respondents' representatives are engaged in the income tax business full time only from January 1 to April 15 of each year.

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

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents and their representatives

have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 9. The use by respondents and their representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' and their representatives' income tax preparation services by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon

accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, 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 J.D. Gramm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 461 Hialeah Drive, Hialeah, Florida.

Respondents David Goldberg and Virginia M. Goldberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents J.D. Gramm, Inc., a corporation, its successors and assigns and its officers, and David Goldberg and Virginia M. Goldberg, individually and as officers, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device or through their franchisees or licensees, in connection with the preparation of income tax returns, or other services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any customer's tax return prepared by respondents or respondents' representatives is guaranteed, unless the true nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; or making any representation that such returns are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

2. Representing, directly or by implication, that respon-

dents' and their representatives' tax preparing personnel are specially trained and are unusually competent in the preparation of all tax returns, or that they have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Representing, directly or by implication, that respondents offer auditing services or that respondents verify tax information submitted by their customers for tax preparation purposes.

4. Representing, directly or by implication, that all respondents' representatives are engaged in the income tax business full time on a year round basis.

It is further ordered, That:

a. Respondents herein deliver a copy of this decision and order to each of their present and future employees, agents, representatives, franchisees or licensees and any other persons, partnerships or corporations authorized by respondents to engage in the commercial preparation of income tax returns.

b. Respondents inform each such person so described in paragraph a above that respondents are obligated by the terms of this order to notify the Commission of persons who continue on their own the deceptive practices prohibited by this order.

c. Respondents, in their continuing business dealings with each said person described in paragraph a., take note of any failure to observe the requirements of this order and advise the Federal Trade Commission of such failure.

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

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

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

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

IN THE MATTER OF

SEEKONK FREEZER MEATS, INC., ET AL.

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

Docket 8880. Complaint, March 23, 1972—Decision, March 15, 1973.

Order requiring a Seekonk, Massachusetts, seller and distributor of meat and meat products, among other things to cease using "bait and switch" tactics in selling and advertising its products; misrepresenting the price, quantity, quality of any meat or other food products or the savings available to purchasers thereof; failing to disclose to customers that any credit transactions with respondent will be transferred to a finance company or other third party and failing to disclose a statement to the effect that any subsequent holder of a credit transaction is subject to the terms and conditions of the original contract; and failing to provide certain information required by Regulation Z of the Truth in Lending Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Seekonk Freezer Meats, Inc., a corporation, and Lawrence Fontes, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Seekonk Freezer Meats, Inc., is a corporation organized, existing and doing business under and by

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virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 1408 Fall River Avenue, Seekonk, Massachusetts.

Respondent Lawrence Fontes is an officer of the corporate respondent. Said individual respondent formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 1408 Fall River Avenue, Seekonk, Massachusetts.

PAR. 2. Respondents, for some time last past, have been and are now engaged in the advertising, offering for sale, sale and distribution of meat and meat products (hereinafter "products") to members of the purchasing public. Said products come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business and at all times mentioned herein respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of such products.

PAR. 4. In the course and conduct of their business, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning the said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements in newspapers of general circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and have disseminated and now disseminate, and have caused and now cause the dissemination of, advertisements concerning said products by various means, including the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Also in the course and conduct of their business, respondents have caused and now

cause customers' notes, contracts, payments, checks, credit reports, correspondence and other documents relating to payment of the purchase price for respondents' products to be transmitted by various means, including but not limited to the United States mails, in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

Invitation to Save on Your Meat Bill. Loin & Rib—Club Steaks—Rib Steaks—Rib Roast—Porterhouse Steak—T-Bone Steaks—Short Cut, Rump Steaks—Sirloin Steaks—Filet Mignon—Sirloin Tip Roast—also a Small Amount of Ground Beef—50¢ per lb.

Feed the Whole Family Choice Beef for Only \$24.69 per Month. Choose From Three Bundles—Rib & Chuck 69¢ per lb.—Loin & Rib 75¢ per lb.—Loin & Rounds 79¢ per lb.

Beat Inflation! Beef Sale 7 days Only! Three Bundles to Choose From—Rib & Chuck 43¢ per lb.—Loin & Rib 50¢ per lb.—Loin & Rounds 52¢ per lb. Select Cut Choice & Prime Beef Orders 45¢ per lb. & Up.

USDA Prime Variety Order Only \$3.80 per Week for 52 Weeks.

Money Saving Beef Sale * * * 3 Bundles to Choose From. Your Choice for only \$16.25 per Month for 4 Months.

PAR. 6. By and through the use of the aforesaid statements, and others of similar import and meaning not specifically set forth herein, respondents have represented, and now represent, directly or by implication that:

(1) Offers set forth in said advertisements are bona fide offers to sell products of the kind therein described at the prices stated therein.

(2) The advertised meat is high quality meat.

(3) Meat advertised consists entirely or primarily of high quality cuts of meat including steaks.

(4) Persons purchasing meat from respondents at a stated price per week or per month are paying a significantly lower total price for meat than the price they had been paying.

PAR. 7. In truth and in fact:

(1) The offers set forth in said advertisements and other offers not set forth in detail herein are not bona fide offers to sell said meat products but to the contrary are made to induce prospective purchasers to visit respondents' place of business for the purpose of purchasing said advertised meat. When prospective purchasers

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in response to said advertisements attempt to purchase the advertised products, respondents inform them that the advertised prices apply only to very low quality meat and respondents make no effort to sell such low quality advertised meat but in fact disparage it in a manner calculated to discourage the purchase thereof, and attempt to and frequently do sell much higher priced meats.

(2) Meat advertised is not high quality meat. The meat selected by respondents for advertising is in some instances meat which has not been graded by the United States Department of Agriculture, and in other instances graded meat which is below the grade of Prime, Choice and Good.

(3) The meat advertised does not consist entirely or primarily of high quality cuts of meat, including steaks.

(4) The advertised prices per week or per month only relate to ungraded or low grade meat and do not represent a significant saving to prospective purchasers over the price of similar meat available to such purchasers.

PAR. 8. Respondents in some instances by their advertising disseminated as aforesaid have represented, and now represent, directly or by implication, and by failure to disclose the average weight loss in meat due to cutting, dressing and trimming, that the meat advertised and sold by respondents would weigh approximately its advertised or purchased weight, and that other meat purchases when ready for home freezer storage would equal or approximate their total purchase weight. Said representations are contrary to the fact, as respondents' beef sides are sold by the pound at their carcass or uncut weight. The cutting, dressing and removal of fat, bone and waste materials greatly reduce the total weight; and a meat order when ready for home freezer storage is neither equal to nor does it approximate the total weight of said meat at the time of purchase.

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

PAR. 9. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase

of their meat and meat products, respondents have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

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

PAR. 10. Use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete and into the purchase of substantial quantities of the aforesaid products, including higher priced products than those advertised because of said mistaken and erroneous belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the ordinary course and conduct of their business

as aforesaid, respondents arrange for, and for some time last past have arranged for, the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Respondents regularly place, and for some time last past have placed, for publication in newspapers of general circulation advertisements to aid, promote, and assist credit sales, as "credit sale" is defined in the aforesaid Regulation Z.

By and through the use of certain of said advertisements respondents have represented the amount of an installment payment, the number of installments, and the period of repayment without also disclosing the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) of Regulation Z:

1. The cash price;
2. The amount of the downpayment required or that no downpayment is required;
3. The amount of the finance charge expressed as an annual percentage rate; and
4. The deferred payment price.

PAR. 13. Pursuant to Section 103(q) of the Truth In Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes a violation of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

Mr. Martin J. Dolan, Jr. and *Mr. Charles M. LaDue* (Boston Regional Office), for the Commission.

Mr. Ira L. Schreiber and *Mr. Donald J. Nasif, Schreiber, Clingham & Gordon*, Providence, Rhode Island, attorneys for respondent.

INITIAL DECISION BY DANIEL H. HANSCOM,
ADMINISTRATIVE LAW JUDGE

JANUARY 26, 1973

PRELIMINARY STATEMENT

By its complaint issued March 23, 1972, the Federal Trade Commission charged respondents with unfair, false, misleading,

and deceptive practices in the advertising, offering for sale, sale and distribution of meat and meat products to members of the purchasing public in violation of Sections 5 and 12 of the Federal Trade Commission Act. The complaint further charged respondents with violations of the Truth in Lending Act through practices utilized to aid and promote credit sales.

The complaint alleged in substance that low prices for beef featured in respondents' advertisements were not bona fide offers to sell, but were made to get customers to visit respondents' place of business and that, when such customers did visit respondents' place of business to buy the advertised meat, they found it not as advertised and were switched by respondents to the purchase of much higher priced meat. In sum, the complaint challenged the alleged use of so-called "bait and switch" tactics in the advertising and sale of freezer meats. According to the complaint, the meat featured in respondents' advertising was misrepresented as being of high quality, and as consisting entirely or primarily of steaks and other highly desirable cuts. The complaint further alleged that respondents' advertising misrepresented that persons buying meat from respondents at a stated price per week or month would pay a significantly lower price than such persons had been paying elsewhere, and was misleading in not disclosing the average weight loss due to cutting, dressing and trimming. Finally, it was charged that the notes of purchasers who had been attracted to respondents' premises by the allegedly deceptive advertising were sold to third parties who could interpose defenses which might cut off possibly valid claims against respondents, and that respondents advertised certain credit terms and consummated sales without making the disclosures required under the Truth in Lending Act and its implementing regulations.

Respondents' answer, filed April 27, 1972, admitted that Seekonk Freezer Meats, Inc., was a corporation existing under the laws of the Commonwealth of Massachusetts, with its place of business located at 1408 Fall River Avenue, Seekonk, Massachusetts, that the individual respondent, Lawrence Fontes, was an officer and administered the business of respondent corporation, that respondents were engaged in the sale of meat and meat products to the purchasing public and disseminated advertising for the purpose of inducing the purchase of such products, and that respondents were in competition with other firms in the

sale of freezer meats. Otherwise, respondents essentially denied the material allegations of the complaint and left counsel supporting the complaint to the proof thereof.

This case was first assigned on April 3, 1972, to Administrative Law Judge (then Hearing Examiner) Walter R. Johnson, who conducted a prehearing conference and entered a prehearing order on May 12, 1972. On August 31, 1972, in view of the impending retirement of Judge Johnson, this proceeding was transferred to the undersigned. Thereafter, hearings were scheduled to commence October 10, 1972, in Providence, Rhode Island. Hearings in fact commenced on that date and continued until the case was concluded on October 17, 1972, except for one additional stipulation between counsel which was filed on October 27, 1972. On receipt of this stipulation, the record was closed. A motion to dismiss, made at the completion of the case-in-chief, was denied.

This initial decision is based on the record as a whole and on the observation by the undersigned of the witnesses and their demeanor. References to particular parts of the record are cited as examples only. Proposed findings of fact and conclusions of law submitted by complaint counsel and counsel for respondents, and not included herein in substance, or in the language proposed, are rejected as erroneous, or not in accord with the evidence, or immaterial or irrelevant. The following findings of fact and conclusions of law are made:

FINDINGS OF FACT

Respondents and their Business

1. Respondent, Seekonk Freezer Meats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 1408 Fall River Avenue, Seekonk, Massachusetts.

2. The individual respondent, Lawrence Fontes, is the proprietor and chief executive officer of respondent corporation, and has been since November 10, 1969, when he acquired the business from the preceding owner. As proprietor and chief executive officer, Lawrence Fontes at all times since he acquired the business, has formulated directed and controlled the acts and practices of Seekonk Freezer Meats, Inc. All the outstanding stock of the

corporate respondent is owned by Lawrence Fontes and his wife, and has been since the foregoing date.

3. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of meat and meat products to the purchasing public. Meat and meat products come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

4. In the course and conduct of such business, respondents now cause, and for some time last past have caused, meat and meat products, when sold, to be transported from their place of business in the Commonwealth of Massachusetts to purchasers thereof located in the State of Rhode Island, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their meat and meat products, respondents have made various representations, directly and by implication, in advertisements in newspapers of general circulation, by radio, direct mail, and on occasion over television, respecting their meat and meat products and the prices, terms, and conditions of sale thereof.

6. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms, and individuals in the sale of meat and meat products of the same general kind and nature as those sold by respondents.

7. The annual sales volume of respondents at all times mentioned herein has been substantial, amounting in 1970 to approximately \$800,000.

(For all of the foregoing see Complaint and Answer, complaint counsel's requests for admissions and responses thereto (CX 485), testimony of individual respondent commencing at Tr. 56, particularly Tr. 60-86, and citations in subsequent findings.)

Bait and Switch

1. The record contains many examples of respondents' advertising ranging over a considerable period of time. Much of

respondents' newspaper advertising was patterned after advertisements which Lawrence Fontes and his predecessor obtained from a clipping service, the National System, located in St. Louis, Missouri (Tr. 824). This organization provided respondents and other subscribers with tear sheets of freezer meat company advertising disseminated by firms doing business in many different geographic areas of the United States.

2. The advertising by respondents of their freezer meats and meat products at all times mentioned herein has been extensive. Advertisements were placed frequently and continuously in major newspapers serving the metropolitan area of Providence, Rhode Island, the Providence Daily Journal, the Providence Sunday Journal, the Providence Evening Bulletin, the Fall River, Mass., Herald News, the New Bedford, Mass., Standard-Times, the Pawtucket, Rhode Island, Times, and others. Radio advertising was also utilized over local stations, WICE, Providence, Rhode Island, and WSAR, Fall River, Massachusetts.

3. Exposure of these advertisements to members of the public both in Rhode Island and Massachusetts was substantial. The circulation of the foregoing newspapers is large. The Providence Sunday Journal alone reaches over 200,000 people (CX 354-355; see also CX 415, 418)¹ and it has been estimated that the 184 "spots" broadcast in 1970 for respondents over WICE reached approximately 64,473 people (CX 11).

4. Two examples of respondents' advertising are reproduced herein (CX 24 and CX 50) on the following pages. The first of these advertisements was disseminated in the Providence Sunday Journal TV Weekly on February 1, 1970, and the second in the Providence Journal on Wednesday, September 16, 1970. Many essentially similar advertisements were placed in the Providence Journal and other newspapers during 1970 and early 1971 (CX 23, 28, 32-34, 36, 39-41, 43-48, 50-51, 54-57, 60-61, 63-65, 67, 69, 71, 488, 490-491; RX 5; and billing statements CX 308, 310, 312-313, 315, 317, 319-320, 322-323, 333-334, 339, 344-345, 387, 389, 395-398, 402, 404-406, 408).

5. The spot radio advertising over WICE was as follows (CX 3A-B):

If you're spending more than six dollars a week on meat and not eating filet mignon, * * * You're spending too much. * * * Yes you're spending

¹ Exhibits introduced by counsel supporting the complaint are designated "CX," those offered by respondents "RX."

Providence Sunday Journal TV Weekly, February 1, 1970



Beat Inflation!
BEEF SALE 7 DAYS ONLY!
 NO FREEZER? **FREE** ... STORAGE ... BLAST FREEZING

Call Today [SUN.] COLLECT 336-7150

3 BUNDLES TO CHOOSE FROM
 YOUR CHOICE FOR \$65⁰⁰

\$17.25 PER MONTH
 FOR FOUR MONTHS*

PHONE NOW! **CALL 336-7150**

1. Consisting of: **RIB & CHUCK**

- * CLUB STEAKS
- * SWISS STEAKS
- * DELMONICO STEAKS
- * PRIME RIB ROASTS
- * BAR-B-QUE STEAKS
- * BAR-B-QUE RIBS
- * CHUCK ROAST
- * POT ROAST
- * GROUND BEEF

EXAMPLE:
 150 LBS.
 @ 43¢ LB.
\$65⁰⁰

2. Consisting of: **LOIN & RIB**

- * CLUB STEAKS
- * RIB STEAKS
- * PORTERHOUSE STEAK
- * RIB ROAST
- * Short Cut/RUMP STEAKS

EXAMPLE:
 130 LBS.
 @ 50¢ LB. **\$65⁰⁰**

3. Consisting of: **LOIN & ROUNDS**

- * T-BONE STEAKS
- * ROUND STEAKS
- * SIRLOIN STEAKS
- * PORTERHOUSE STEAK
- * Small Amount of GROUND STEAK
- * SIRLOIN TIP ROAST
- * MINUTE STEAKS
- * RUMP ROAST
- * EYE ROAST
- * ROUND ROAST
- * FILLET MIGNON

EXAMPLE:
 125 LBS.
 @ 52¢ LB.
\$65⁰⁰

ALL WEIGHTS APPROXIMATE

| | | | | |
|---|----------------------------------|--|--------------------------------|-----------------------------------|
| 50 PORK CHOPS \$1.00 <small>Approx. wt. 1 1/4 lbs.</small> | 20 LBS. CHICKEN \$1.00 | SELECT CUT CHOICE & PRIME BEEF ORDERS 57¢ LB. & UP | 10 LBS. BACON \$1.00 | 10 LBS. HOT DOGS \$1.00 |
|---|----------------------------------|--|--------------------------------|-----------------------------------|

1-\$1.00 BONUS BUY With Bundle **DURING OUR \$1.00. DAYS SALE**

USDA PRIME VARIETY ORDER

- * 400 LBS. PRIME BEEF
- * 60 LBS. CHICKENS
- * 30 LBS. PORK
- * 24 LBS. BACON
- * 12 LBS. HAM
- 526 LBS. TOTAL

ONLY \$880* PER WEEK FOR 52 WEEKS

ALL BEEF SOLD HANGING WEIGHT AND SUBJECT TO CUTTING LOSS. CUT AND WRAPPED TO YOUR SPECIFICATIONS ... FREE!

20 LBS. CHICKENS
 FOR OPENING YOUR ACCOUNT IN ADVANCE... **336-7150**

*** CHARGE IT!**

BANKAMERICARD

SEEKONK FREEZER MEATS

1408 FALL RIVER AVE. (Rte. 6) SEEKONK, MASS.

DIRECTIONS: Take 95 to 195 EAST. Take Seekonk Exit to RTE 6. In center 1/2 Mile East of Fallstaff Rest 8 miles from Prov. East of Astro Show.

FINANCING AVAILABLE

STORE HOURS:
 MON. thru FRI. 10:00 A.M. to 8:30 P.M.
 SATURDAY 9:00 to 6:00
 SUNDAY 9:00 to 8:00

40 The Providence Journal, Wednesday, Sept. 14, 1972

CALL NOW (COLLECT) 336-7150 AND RECEIVE 20 LBS. CHICKENS FOR OPENING YOUR ACCOUNT IN ADVANCE

**Steaks
Roasts
Beef**



**FOR
DAD**



**FOR
MOM**



**OF ALL CUTS
FOR THE KIDS**

**FEED THE
WHOLE FAMILY CHOICE
BEEF FOR ONLY**



**\$24⁶⁹
PER MO.**

FOR 120 DAYS SAME AS CASH



CHOOSE FROM 3 BUNDLES

| | | |
|---|---|--|
| <p>1 RIB & CHUCK</p> <p><small>Consisting of: Club Steaks—Semi Steaks & Delmonico Steaks—Prime Ribs—Roasts—Spiced Steaks—Minute Steaks—Bar-B-Que Ribs—Chuck Roasts—Fat Roast—Ground Beef</small></p> <p>143 LBS. AT .69 LB.</p> | <p>2 LOIN & RIB</p> <p><small>Consisting of: Club Steaks—Rib Steaks—Porterhouse Steaks—Rib Roast—Short Cut Rump Steaks—T Bone Steaks—Sirloin Steaks—Flat Mignon—Sirloin Tip Roast Also small amount of Ground Beef.</small></p> <p>132 LBS AT .75 LB.</p> | <p>3 LOIN & ROUNDS</p> <p><small>Consisting of: Prime Steaks—Round Steaks—Sirloin Steaks—Porterhouse Steaks—Small Amount of Ground Steaks—Sirloin Tip Roast—Minute Steaks—Rump—Flat—Eye—Roast—Round Roast—Flat Mignon</small></p> <p>125 LBS. AT .79 LB.</p> |
|---|---|--|

***1 BONUS BUYS
WITH ANY BUNDLE PURCHASE**

| | | | |
|---------------------------------|---|------------------------------|-------------------------------|
| <p>25 PORK CHOPS</p> | <p>5 lbs. BAR-B-QUE SPARE RIBS</p> | <p>5 lbs. SAUSAGE</p> | <p>50 HOT DOGS</p> |
|---------------------------------|---|------------------------------|-------------------------------|

**ALL TOP QUALITY PRODUCTS
ALL WEIGHTS APPROXIMATE—U.S.D.A. CHOICE U.S.D.A. GOVERNMENT INSPECTED QUALITY BEEF**



DIRECTIONS: SEEKONK EXIT OFF 103 EAST. TAKE RTE. 6 PAST THE AUTO SHOW AND WE'RE JUST AHEAD ON THE LEFT

NEW HOURS MONDAY-FRIDAY 10 AM-8 PM
SAT. 10 AM-8 PM
SUNDAY 2-5 PHONE CALLS ONLY

far more than you should for your families Beef needs. * * * Seekonk Meats on Route six in Seekonk is the butcher of inflation * * * and can feed your family mouth watering USDA choice beef cut to your specifications. * * * At Seekonk Meats you can get one hundred twenty-five pounds of USDA choice Beef cut to T-Bones, Round Steak, Sirloin, * * * Filet Mignon, Eye Roast, Round Roast, * * * all for only twenty-four-sixty-nine a month. * * * That's twenty-four-sixty-nine a month for four months treated as a cash sale with no interest or carrying charges added or you can charge it on your Bank Americard or Mastercharge. * * * Now put that in your freezer and enjoy it! * * * If you don't have a freezer, Seekonk will store it for you at no charge. * * * To enjoy your delicious Seekonk steak this summer Seekonk Meats will give you a beautiful outdoor Barbeque Grille with every beef order this week * * * Hop on over to Seekonk Meats fourteen 0 eight Fall River Avenue Seekonk. * * * and tell Rusty to roll out that free BarB-Que Grille. (Words originally crossed out in pen and ink on exhibit, apparently by WICE personnel, omitted.)

The scripts of the broadcasts over WSAR were similar in tone offering "succulent juicy fresh steaks for the price of Hamburg" (CX 1-2). See also as to radio advertising over WICE and WSAR: additional scripts, CX 4, 19-20; affidavits of performance, CX 7-8, 331; broadcast orders, CX 9, 11, 15-16; and billing statements, CX 333-334.

6. Complaint counsel subpoenaed 19 members of the public who had responded to such advertising of respondents and had traveled to respondents' place of business to purchase the advertised meat. Without exception these witnesses appeared to be responsible and sincere persons, who were drawn in good faith by the attractive presentation of respondents' meat as advertised and the low prices featured. Most of these prospective customers had seen advertising in the Providence Journal or other newspapers.

7. Although the experience of these customers upon presenting themselves at respondents' place of business varied somewhat, in general events took the following pattern: Customers, frequently a housewife accompanied by her husband, would enter respondents' premises and would make known their interest in the low priced attractive meat offered in respondents' advertising. The prospective customers would then be taken into a freezer and a "side" of beef or other large portion of a beef carcass would be shown to them. In contrast to the impression created by respondents' advertising, the meat displayed would be extremely unattractive, often very fatty, and would give the appearance of being unwholesome if even edible. Upon seeing this meat,

most prospective customers would be discouraged. On occasion, respondents' employees disparaged the advertised meat. When customers turned from the meat shown, respondents' employees would then advise that better meat was available. Thereafter prospective customers would be taken to a different area of respondents' freezer and shown other sides or quarters of beef or other sides or quarters of beef would be brought out. Invariably, this beef would be of the quality, wholesomeness, appearance and attractiveness suggested by respondents' advertising and which the prospective customers were interested in and came to see, but the price would be much higher. Respondents would then attempt to sell the prospective customers this higher priced meat, and usually would succeed, although often the higher price per pound initially quoted would ultimately be reduced somewhat, but never to the prices per pound offered in respondents' advertising. Prospective customers frequently were sold much larger quantities of meat than featured by respondents in their advertising, and such sales were at much higher prices per pound. See the following (transcript pages indicate the commencement of testimony on direct): Gauthier, Tr. 359; Le Doux, Tr. 382; Rich, Tr. 398; Cerbarano, Tr. 424; Werbinski, Tr. 448; Clark, Tr. 503; Turner, Tr. 467; Luoin, Tr. 487; Sanford, Tr. 516; Enos, Tr. 539; Alves, Tr. 553; Hebert, Tr. 585; Berek, Tr. 607; Brown, Tr. 623; Dierks, Tr. 643; Keneally, Tr. 654; Sousa, Tr. 672; Gale, Tr. 708, and Gosselin, Tr. 691.

8. The specific experiences of a number of witnesses who answered respondents' advertising are summarized in the following paragraphs:

Witness saw respondents' advertisements in the Providence Bulletin featuring three "Bundles" of beef, as in the advertisements duplicated herein, and thought the prices quoted were "very low." The advertising which attracted him featured "Rib & Chuck" at 43¢ per pound, "Loin & Rib" at 50¢ per pound, and "Loin & Rounds" at 50¢ per pound, "Your Choice For Only \$65.00." He concluded that you "don't get buys like this every day." The next day he drove to respondents' premises with his wife and asked to see the advertised meats. He described the meat shown as "bad; fatty and dark." It didn't look good to him. As he was looking at the meat, respondents' salesman said, "You people don't want this meat," and stated that he would show them a "better piece." Witness ultimately bought 199 pounds of the

better meat shown to him, paying \$256.71, \$1.29 per pound before cutting and trimming (Tr. 361-380; CX 36, 496A).

Witness saw one of respondents' advertisements in the New Bedford, Mass., Standard-Times in early 1971. It featured U.S.D.A. Choice beef "Packs," "Rib & Chuck" at 69¢ per pound, "Loin & Rib" at 75¢ per pound, and "Loin & Rounds" at 79¢ per pound. Witness and his wife went to respondents' place of business where they waited for a while and then were shown into respondents' freezer. The salesman showed them a piece of beef "hanging by itself, nothing else around." The beef "looked terrible." It looked like "all suet and very little meat." Witness and his wife did not want the meat displayed to them, and the salesman stated that respondents had "something better over here." He went to another part of the freezer and brought out a side of beef that was much better. Witness and his wife found this meat attractive and ultimately purchased approximately 305 pounds for \$362.95 at \$1.19 per pound before cutting and trimming (Tr. 382-397; CX 481, 489).

Witness saw a full page advertisement in the Providence Sunday Journal TV Weekly on April 5, 1970, featuring three "Bundles," 150 Pounds of "Rib & Chuck" at 43¢ per pound, 130 pounds of "Loin & Rib" at 50¢ per pound, and 125 pounds of "Loin & Rounds" at 50¢ per pound, all at \$16.25 per month. These "Bundles" and prices caught witness' eye. She thought the meat was "a good buy" and was interested particularly in the "Bundle" at 43¢ a pound. She went to respondents' premises with a neighbor. Respondents' salesman took them into respondents' freezer where four pieces of beef were hanging up. The salesman talked fast and went by the first piece fast. Witness thought it looked "very dry." Witness and her neighbor were "disappointed at what we saw for the price of 43¢ a lb." It "looked old and crummy." Witness and her neighbor did not want the 43¢ meat, but did buy 160 pounds of other meat from respondents for \$190.40 at \$1.19 per pound (Tr. 424-446; CX 32, 191).

Witness saw an advertisement of respondents in one of the Providence papers some time in June 1970. She was attracted by the low prices quoted for the "Bundles" of meat featured, particularly "Bundle No. 3," 125 pounds of "Loins & Rounds * * * at 52¢ per pound, \$16.25 per month." She made an appointment by telephoning respondents and thereafter journeyed to respondents' premises. There she was ushered into a cooler and

shown a hanging portion of a beef carcass and advised that it was the meat advertised. It "was a hunk of fat." The salesman said she "didn't want that piece of meat." She was then shown more expensive beef and purchased a 170 pound piece for \$136 at 80¢ per pound (Tr. 448-466; CX 40, 185).

Witness saw an advertisement of respondents in the Sunday Providence Journal around June 15, 1970. She was interested in the low price of 43¢ per pound, \$16.25 per month, quoted for "Bundle No. 1," and went to respondents' premises with her husband. On arrival, the salesman was at first reluctant to show them the advertised meat. When they persisted, he showed it to them, referring to it as "cow meat." Witness thought the meat looked "awful," that it looked "just like something very tired, very dead and just something not for human consumption." Witness rejected the advertised meat exhibited to them. Respondents' employees then showed witness and her husband other beef which looked much better at a higher price. Witness and her husband purchased 105 pounds for \$93.45 at 89¢ per pound (Tr. 503-516; CX 39, 241).

Witness saw one of respondents' advertisements in the newspaper. She was attracted by "Bundle No. 3" advertised to consist of 125 pounds of "Loin & Rib" at 52¢ per pound, \$16.25 per month. She was also attracted by the cuts of meat featured, "the T-bones, the round steaks, porterhouses, small amount of ground steaks." The prices advertised were lower than in the retail markets. Witness and her husband went to respondents' premises and asked to see the advertised meat. The salesman took them to the back and said, "I got some good stuff for you." They asked to see the sale meat and the salesman said they didn't want to see that because it was "cow" and they wanted beef. Finally, the salesman did show the advertised meat. Witness testified it looked "like a big piece of fat." The salesman again stated it was "cow" and wasn't beef. Better cuts of meat were then exhibited at higher prices, the salesman saying, "if we bought more it would be cheaper." Witness and her husband purchased 399 pounds at \$1.09 per pound for a total price of about \$434 (Tr. 516-537; CX 40, 243).

Witness saw one of respondents' advertisements in the Providence Sunday Journal TV Weekly. She was attracted by the three "Bundles" offered and was particularly interested in the second featuring 130 pounds of "Loin & Rib" at 50¢ a pound,

"\$16.25 per month." She and her husband "didn't want to miss out on the sale" so they went to respondents' premises the next day and "were brought in the back and were shown the meat hanging." Witness testified that the meat was "brownish in color and it was dried-up looking and it was covered with fat." The salesman had "one of the men from the back come out and cut sections of it off to show us what was underneath, and something like 12 inches of fat * * *." Respondents' salesman asked witness and her husband "if we would actually feed our children this, and we said no." The witness and her husband were then shown more expensive meat which had a much better appearance but the price was higher. Witness and her husband purchased 372 pounds of other meat at 99¢ a pound for a total amount of \$368.72. Witness and her husband had not intended to buy that much meat when they originally journeyed to respondents' premises (Tr. 606-622; CX 28, 192).

Witness saw an advertisement of respondents in early 1970. She was interested in the low prices featured for the various "Bundles." She and her husband went to respondents' premises. The meat advertised was shown to them and witness found it "black." It looked "like it had been hanging for at least two months." Witness testified she "wouldn't eat it and wouldn't even feed it to [her] dog." Respondents' salesman brought out other beef for \$1.09 a pound. Witness and her husband purchased 936 pounds at \$1.09 a pound for a total price of over \$1,000 (Tr. 672-690; CX 22).

Witness saw an advertisement of respondents in the Providence Journal in the early summer of 1970. She was attracted by the offer of 50 pounds of beef for "Steak Lovers" at \$29.50, consisting of "Sirloins, T-bones, Porterhouse, Plank Steak, Ground Beef, Filet Mignon, Rump Steak." She and her husband went to see the advertised meat. When they arrived at respondents' premises, an employee showed them the meat advertised for \$29.50 and witness found "it was really bad, it was like a piece of yellow fat." As respondents' salesman was showing them the meat advertised in the Providence Journal, he remarked, "You don't really want to see this; this is the poorest grade we have. I will show you something better." Although witness journeyed to respondents' premises to purchase 50 pounds of advertised meat at \$29.50, she "ended up buying 500 pounds" of beef at \$1.19 per pound for a total purchase price of \$565.

Witness did not have a freezer so respondents stored the meat for her. The meat was gone within three months and witness did not believe her family could have "eaten 500 pounds in three months." They did not keep a record of the meat as it was withdrawn from respondents' freezer so she felt she had no recourse (Tr. 708-716; CX 40, 176).

Witness saw an advertisement of respondents in one of the Providence area newspapers in July 1970. He was attracted by the offer of beef at 69¢ per pound. Several days after he saw the advertisement, he and his wife went to respondents' premises. Upon entering the store, one of respondents' salesmen asked what they were "looking for." Witness advised that he and his wife were interested in the advertised meat. Respondents' employee indicated to them that they would not "want" the advertised meat. The meat then shown was too expensive for witness and his wife and they insisted on seeing "69 cent meat." The meat then shown to them "didn't look too good," it was "covered with fat" and they "couldn't see any meat." Although the witness had gone to respondents' premises specifically to purchase meat for 69¢ per pound, he and his wife ultimately bought \$277 worth of beef at 99¢ per pound. Respondents' employees reduced the price to 99¢ per pound from approximately "\$1.19 a pound or \$1.25 a pound" (Tr. 487-502).

Witness believed she saw an advertisement of respondents appearing in the Providence Sunday Journal on July 19, 1970. She was not sure of the exact date because "it used to be in the paper every week." She was interested because of the low prices featured, "69, 79 a pound." She thought the meat was "kind of cheap." Her son drove her to respondents' premises from their home in Cumberland, Rhode Island. When she arrived, she told respondents' employees that she had come "in response to the advertisement" and wanted to see the advertised meat. She was shown the meat and the "minute" she saw it she said she "didn't want it." It "really didn't look healthy." Witness testified she remarked to her son on seeing the advertised meat that she "wouldn't even give it to the dog," and respondents' employee "just laughed and that's when he went into the freezer to get the other piece." He brought out a better looking piece of meat which he quoted to witness at \$1.29 per pound. Witness thought this meat looked good and she bargained with respondents' salesman who finally reduced the price to \$1.09 per pound.

Witness purchased 200 pounds of meat for \$218 at \$1.09 per pound (Tr. 654-671; CX 44, 226).

Witness saw an advertisement of respondents in August of 1970 in the Providence Sunday Journal. Witness thought if she went to respondents' premises and bought this meat she "would save money." She was interested particularly in the advertised "Bundle #3" offering "Loin & Rounds" at 75¢ a pound. She concluded from the advertisement that the meat advertised was "a good quality of beef" and went to respondents' premises with her husband driving a distance of about six miles. When she arrived she asked to see "Bundle #3" and was shown a hanging piece of meat. The salesman told her "that was the meat" advertised, and she said, "you know, you have to be kidding; this isn't even meat, you know; it's fat." In response, the salesman said it was "heifer" but that he had steer beef which would be better. Witness looked at the better meat which was quoted at \$1.20 a pound. Witness bargained with the salesman and ultimately purchased 667 pounds of meat for about \$563 paying approximately 85¢ a pound (Tr. 623-642; CX 48, 497).

9. Although some customers on cross-examination testified that respondents did not actually refuse to sell the meat shown to them as that which had been advertised, the fact is, as the foregoing reveals, its unwholesome appearance was such that on seeing it the witnesses were discouraged from buying it. Customers' rejection of the advertised meat was assisted on occasion by open disparagement of it by respondents' employees. See Gauthier, Tr. 359, 363-364; Rich, Tr. 398, 400-401; Werbinski, Tr. 448, 452-454; Clark, Tr. 503, 506; Sanford, Tr. 516, 519-521; Enos, Tr. 539, 541; Alves, Tr. 553, 557; Berek, Tr. 607, 609-610, 617; Brown, Tr. 623, 627; Dierks, Tr. 643, 645-646; Keneally, Tr. 654, 658; Gale, Tr. 708, 711.

10. Many of respondents' advertisements stated "U.S.D.A. Commercial" under each of the "Bundles" featured or elsewhere in the advertisement. See, for example, CX 26, 28, 32. Beginning about June 15, 1970, respondents ceased using "U.S.D.A. Commercial" in their advertisements and began using "U.S.D.A. Choice." When the latter was used, the meat shown to prospective customers answering respondents' advertisements was yield grade 5, *i.e.*, from an overfat, wasty carcass (Tr. 132-133, 142; CX 447; Tr. 309-312). Respondents' method of operation remained the same throughout. The meat shown to the purchasing

public answering respondents' advertisements was sufficiently repellant in appearance to discourage the purchase of it aside from whether the advertisement said "U.S.D.A. Commercial," "U.S.D.A. Choice," or neither. Prospective purchasers were "switched" to higher priced meat; in fact, every one of the 19 witnesses who testified herein at the behest of counsel supporting the complaint ultimately purchased more expensive meat than that advertised by respondents despite the fact that every one had come to respondents' premises seeking the low priced beef advertised.

11. Respondents' advertising was false, misleading and deceptive in that it held out to the public the offer of attractive quality meat at bargain prices not in truth available.

12. Respondents' advertising was not bona fide but was utilized for the purpose of luring members of the public into visiting respondents' premises so that they could be sold other meat than that advertised at prices higher than those advertised, and in quantities larger than advertised. Between March and August 1970, respondents made almost 98 percent of sales at prices far higher than the prices advertised (Daily Sales Tally Sheets, CX 435a-z120, 453a-q, 455a-z2; see also Lawrence Fontes, Tr. 75; see also CX 456a-x, 457a-n).

13. Respondents' advertising and selling practices constituted an unfair and deceptive scheme by which members of the public, on visiting respondents' premises to purchase the advertised meat, were shown a side, quarter or other portion of a beef carcass which was repellant and unwholesome in appearance, were told that such carcass was the advertised meat, such meat was openly or subtly disparaged, and, when prospective customers indicated discouragement with the exhibited meat, attempts were made to sell them meat much higher in price and in much larger quantities than featured in respondents' advertising. These attempts were usually successful.

Quality and Cuts

1. Respondents' advertising generally followed the form of the examples reproduced herein. Three "Bundles" or "Packs" were featured. The cuts listed and the layout and content of the advertisements suggested attractive meat of excellent quality. In the first newspaper advertisement herein, "Bundle No. 1" was

advertised as 150 pounds of "Rib & Chuck" at 43¢ per pound consisting of:

| | |
|------------------|----------------|
| Club Steaks | Minute Steaks |
| Swiss Steaks | Bar-B-Que Ribs |
| Delmonico Steaks | Chuck Roast |
| Prime Rib Roasts | Pot Roast |
| Bar-B-Que Steaks | Ground Beef |

"Bundle No. 2" was advertised as 130 pounds of "Loin & Rib" at 50¢ per pound consisting of:

| | |
|--------------------|---------------------|
| Club Steaks | Rump Steaks |
| Rib Steaks | Sirloin Steaks |
| Rib Roast | Filet Mignon |
| Porterhouse Steaks | Sirloin Tip Roast |
| T-Bone Steaks | Also a Small Amount |
| Short Cut | of Ground Beef |

"Bundle No. 3" was advertised as 125 pounds of "Loin & Rounds" at 52¢ per pound consisting of:

| | |
|--------------------|-------------------|
| T-Bone Steaks | Sirloin Tip Roast |
| Round Steaks | Minute Steaks |
| Sirloin Steaks | Rump Roast |
| Porterhouse Steaks | Eye Roast |
| Small Amount of | Round Roast |
| Ground Steak | Filet Mignon |

See also CX 32-34, 36, 39-41, 43-48, 50-51, 54-57, 60-61, 63-65, 67, 75, 487, 489-490, 491. In addition to the contents of the "Bundles" or "Packs," almost all respondents' advertisements featured pictures of delicious looking steaks or cuts of meat, or stocky beef cattle. Advertising was sprinkled with phrases such as "mouth watering USDA Choice beef," "Feed the Family Like Kings," "juicy tender succulent beef," "All Top Quality Products," "Choice Beef," or statements such as "If you are spending more than six dollars per week and not eating filet mignon, you're spending too much" (CX 1, 19, 44, 46-47, 48-50, 349-350). An advertisement in the Providence Journal specifically stated "Our Pledge to You," "We sell only U.S.D.A. Prime & Choice Beef," "All our meat is fresh Western beef, not frozen," "Satisfaction Guaranteed."

2. Advertising is to be judged by the overall impression created. There is no question that members of the purchasing public, on seeing respondents' advertising or hearing it broadcast, would conclude that the beef featured in the "Bundles" or "Packs"

offered by respondents was of excellent quality, highly desirable for family use, and consisted primarily of choice or select cuts, especially steaks of all kinds. The use of the term "U.S.D.A. Commercial" in a number of respondents' advertisements neither countered this overall impression, nor disclosed the unwholesome quality of the meat shown by respondents to members of the public answering respondents' advertisements.

3. Respondents' advertising misrepresented the quality of the beef featured in the "Bundles" or "Packs," and misrepresented the proportion of steaks and other select cuts in such "Bundles" or "Packs." With respect to the latter aspect, Lawrence Fontes testified as to "Bundle No. 1" that the purchaser would "take home some steaks, but the overwhelming balance would be in ground beef," that the purchaser of "Bundle No. 2" would "take home perhaps 50 percent as edible product," that "Bundle No. 3" would result in some steaks, some roasts, and a "little bit of everything" (Tr. 88-89). The waste and ground beef resulting after cutting, dressing, and trimming all three "Bundles" or "Packs" featured in respondents' advertising amounts to between 45 percent and 50 percent of the hanging weights (Kablesch, an expert meat cutter from the U. S. Department of Agriculture subpoenaed by complaint counsel, Tr. 298-299, 311-313; CX 447). The pounds of meat listed under each of the three "Bundles" advertised, therefore, did not consist primarily of choice or select cuts, especially steaks, as implied by respondents' advertising.

Misrepresentation of Savings

1. Respondents' advertising in general emphasized "savings." Respondents typically used terms or phrases implying and representing savings such as "Beat Inflation," "Wholesale prices," "Save," "Money Saving Beef Sale," "Prehistoric Prices," "Beef Sale Dollar Days," "Drive Few Miles and Save Lots of Dollars," "Save the Seekonk Way," "Eat USDA Choice Filet Mignon * * * Even Five Times a Week For Less Money Than You are Spending Now" (CX 3-4, 20, 22, 33, 44, 46-47, 51, 57, 349-350). The WICE commercial suggested that any family spending over six dollars a week for meat was spending "too much" and the WSAR commercial promised savings of 30 percent and "Tender Juicy Fresh Steaks For the Price of Hamburg" (CX 2). The findings enumerated earlier herein demonstrate that prospective customers visiting respondents' place of business did so after seeing or

hearing respondents' advertisements, and were attracted by what appeared to be unusually low prices for high quality meat and choice cuts, primarily steaks. These prospective customers journeyed to respondents' place of business seeking such low priced, high quality meat and choice cuts; in short, seeking a way to obtain the family meat supply at savings over what they were paying at retail stores.

2. The savings and low prices advertised by respondents and the low per month payments for "Bundles" or "Packs" featured, only related to unattractive, unwholesome looking meat openly or subtly disparaged by respondents' employees, which prospective customers were discouraged from buying. As demonstrated in prior findings, most purchasers who answered respondents' advertisements did not buy the advertised meat but bought other meat and paid much higher prices per pound than the prices featured for the three "Bundles." Savings on the purchase of the family meat supply, held out to the public in respondents' advertising, were not in truth and in fact available or realized.

Misrepresentation of Weight Loss

1. The advertisements placed by respondents in newspapers in the Providence metropolitan area during 1970 and 1971, as stated earlier, were all much alike. The impression conveyed by these advertisements was that the purchaser would obtain the approximate number of pounds of the select cuts of meat offered under each of the "Bundles" for the price per pound listed or for the total price listed. For example, the impression conveyed by the first advertisement reproduced herein is that the purchaser would obtain 150 pounds of "Rib & Chuck" consisting of the select cuts listed for 43¢ per pound or \$65 total price, that the purchaser would obtain 130 pounds of "Loin & Rib" consisting of the select cuts listed for 50¢ per pounds or \$65 total price, or that he would obtain 125 pounds of "Loin & Rounds" also consisting of the select cuts listed for 50¢ per pound or \$65 total price. The admonition "All Weights Approximate" reinforced this impression.

2. The first advertisement reproduced contains small print at the bottom reading "All Beef Sold Hanging Weight And Subject to Cutting Loss." Similar statements may be found in the other advertisements of respondents. Some of respondents' advertisements, for example, that of March 8, 1970 in the Providence

Sunday TV Weekly (CX 28), added to the foregoing the statement: "Your order is custom cut to your family's specifications so that you realize a 90 percent to 65 percent take home weight."

3. In the second advertisement herein, carried in the Providence Journal on Wednesday, September 16, 1970, which consisted of a full page, the only statement made is: "All weights approximate." Nothing is said in this advertisement concerning weight loss or reduction in the pounds advertised due to cutting, dressing, or trimming, and it is clearly deceptive and misleading in this respect.

4. Starting about July 16, 1970, respondents ran a series of "spot" radio broadcasts over WICE, Providence, Rhode Island, the transcript of which has been reported. These broadcasts were continued until July 31, 1970, and stated that at respondents' premises the public could obtain 125 pounds of U.S.D.A. Choice Beef cut to T-Bones, Round Steak, Sirloin, Filet Mignon, Eye Roast and Round Roast, all for only \$24.69 a month (CX 3A). This broadcast made no mention of any weight loss or reduction in the foregoing 125 pounds of beef advertised due to cutting, dressing and trimming, and was deceptive and misleading in this respect.

5. Turning to the advertisements which contain some reference to hanging weight or cutting loss, the fact is that in all instances the emphasis of the advertisements was on the select cuts each of the three "Bundles" consisted of, the total pounds in each "Bundle," and the price at which each of the "Bundles" was sold. Even if members of the public carefully noted the statements toward the bottom of respondents' advertisements, that all beef was sold hanging weight and subject to cutting loss, or that the customer's order was cut to his specifications to realize a 90 percent to 65 percent take home weight, the significance of these statements could not be determined. In the overall context of respondents' advertisements, "All Beef Sold Hanging Weight—Subject to Cutting Loss" and "Your Order is Custom Cut—You Realize 90–65 percent Take Home Weight" are vague and indefinite statements not amounting to disclosure of weight loss, average or otherwise, due to cutting, dressing, and trimming. From the unequivocal statement listing total pounds under each "Bundle," prospective purchasers could well conclude that they would obtain that number of pounds of the cuts listed if they purchased one or another of the three "Bundles"

advertised. Suggestion of a 90 percent take home weight, moreover, in itself is misleading. Lawrence Fontes testified that none of the "Bundles" produced a 90 percent take home weight after cutting, dressing, and trimming (Tr. 88-91; see also Kables, Tr. 298-299, CX 447, pp. 3-5, 15-17).

6. The advertising of respondents had the tendency and capacity to mislead members of the purchasing public into believing that the pounds of select cuts of meat listed under each "Bundle" in the advertisements would be the approximate number of pounds of such cuts which purchasers would take home with them.

Discounting of Purchasers' Notes

1. The record establishes that in a substantial number of instances respondents transferred obligations of customers to finance companies. As earlier findings describe, members of the purchasing public, after seeing respondents' advertised meat and being discouraged from buying it because of its appearance or because of respondents' disparagements, or both, often purchased relatively large quantities of meat from respondents at higher prices, resulting in obligations amounting to several hundred dollars or even more. In such instances, customers commonly did not have sufficient money to pay for the meat, and respondents would make the sale on credit. Thereafter, respondents would transfer the outstanding balance of such customers to one of the finance companies doing business in the metropolitan area of Providence.

2. Respondents' advertising represented to the purchasing public that respondents herein would extend credit for the purchase of meat and meat products. Frequent statements were made in such advertising urging members of the purchasing public to telephone and open accounts "in advance" and offering "free" gifts if they did so. Typical were the following: "Free—For Opening Your Account in Advance—10 lbs. Chicken" (CX 22), "Free—10 lbs. Swordfish If You Call Today and Open Your Account in Advance" (CX 26), "Take Advantage of Our Easy Credit Terms for Qualified Buyers" (CX 28), "Twenty-four sixty-nine a month for four months treated as a cash sale" (CX 3A), "Free Barbecue Grille If You Call This Week and Open Your Account In Advance" (CX 34), "Just Call Collect Today * * * To Open Your Account" (CX 44), "Charge it! No

Payment Until Feb. 1971" (CX 63), "Budget Terms Available 4 Months Same as Cash" (CX 65).

3. The testimony of witnesses who purchased meat from respondents establishes that in a substantial number of cases they did not realize that respondents would transfer their obligations to a finance company. Indeed, some of the witnesses displayed a marked hostility toward such companies and did not wish to deal with them. The record establishes that most of the witnesses who testified in this proceeding journeyed to respondents' premises to buy one of the "Bundles" advertised and were prepared to pay the advertised price. If they did not have enough money and bought on credit, the witnesses thought that respondents would carry their outstanding balances. A number of them thought that the offer in respondents' advertisements of free items if the prospective customer would call and open an account in advance meant that respondents extended credit and carried customers' accounts. When the witnesses later received booklets and payment schedules from one or another of the finance companies in the Providence area, they were surprised and, in some instances, angry. For example, one witness, who purchased 199 pounds of meat for \$1.29 a pound after traveling to respondents' place of business with the intention of buying one of the advertised "Bundles" at 43¢ or 50¢ per pound (CX 36), testified that he did not know that a finance company would take over his obligation. This witness testified that he understood from respondents' advertising that respondents would carry any unpaid balance, that he first became aware that his balance had been transferred to a finance company when he received "the little book in the mail" about two or three weeks later, and when this occurred he was "mad" because he "didn't want any dealings with Aetna. * * * didn't want any dealing with any finance because [he] thought Seekonk was going to carry the account themselves" (Tr. 370). Another witness testified, "Not until everything was all transacted did I know that we were going to deal with Aetna. Not until it came down through the mail, I would say" (Tr. 392). Still another also first realized that her unpaid balance had been transferred to a finance company when she received the booklet in the mail several weeks later. She was "very surprised" (Tr. 474-475, 479; see also Tr. 405-406, 415, 456, 587, 597-98, 600, 647-49, 653, 662, 698-700).

4. Whether or not customers of respondents knew at the time

of purchase that the unpaid portion of their obligation would be transferred to a finance company or other third party, the fact is that respondents' advertising was false, misleading and deceptive in representing, directly and by implication, to the purchasing public that the corporate respondent would extend credit and would carry purchasers' unpaid obligations.

5. Such transfer of customers' obligations could result in the cutting off of valid claims of such customers against respondents. The consummation of sales by respondents through unfair, false, misleading and deceptive acts and practices, and the transfer thereafter of obligations of members of the public obtained by such sales to third parties with the possibility of cutting off valid claims of such customers against respondents, constitutes an unfair practice.

6. On April 15, 1970, the Governor of Massachusetts approved an amendment to the General Laws of Massachusetts providing that the "holder of a retail installment sales agreement, or other person acting in his behalf, shall be subject to all defenses, real and personal, which the installment buyer may have against the installment seller thereof." This enactment became fully effective 90 days thereafter on July 14, 1970 (CX 498-99). The State of Rhode Island does not appear to have enacted a comparable statute. The fact that Massachusetts has enacted a statute which appears to preclude Holder-In-Due Course status to acquirers of retail installment sales agreements in no way precludes the Federal Trade Commission from acting in this area.

"Truth in Lending"

1. The record of this proceeding establishes that respondents in the offering for sale and sale of meat and meat products regularly arranged for "consumer credit" as defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System, and that respondents regularly advertised, as described earlier herein, to promote their business and assist in credit sales.

2. Respondents' advertising contained statements such as "Only \$4.72 Per Week For 26 Weeks" (CX 22), "Only \$8.80 Per Week For 52 Weeks" (CX 24, 26, 28, 32, 33, 34, 36, 39 and 487).

3. In such advertising respondents have represented the amount of an installment payment and the number of install-

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ments and the period of repayment, but have failed to disclose, as required by the foregoing Act and regulation, (1) the cash price, (2) the amount of the downpayment required or that no downpayment is required, (3) the amount of the finance charge expressed as an annual percentage rate, and (4) the deferred payment price.

4. Having failed to make the required disclosures, respondents' advertising practices violated the Truth in Lending Act and pursuant to Section 108 thereof respondents thereby violated the Federal Trade Commission Act.

RESPONDENTS' DEFENSES

Abandonment

Respondents urge that the complaint should be dismissed and no order entered because, to the extent any of the practices alleged in the complaint were engaged in, they have been abandoned. Abandonment, however, was accomplished in this case while respondents were under investigation by the Commission's staff (Tr. 812-813, 827-828). It is fundamental that abandonment, in itself, and especially under such circumstances, provides no bar to the issuance of a cease and desist order. The practices which have been the subject of the findings set out herein were seriously oppressive to the public and long continued. Respondents continue to be actively and vigorously engaged in the sale of freezer meats and have no apparent intention of discontinuing this business. Promotional activities continue to be utilized as, indeed, they must be in a business of this nature, and the individual respondent remains in charge as he has been since November 10, 1969. The undersigned having considered the evidence, and having listened to and observed the witnesses, has concluded that the public interest requires the issuance of a cease and desist order.

The Individual Respondent

The proprietor and chief executive officer of the corporate respondent, Seekonk Freezer Meats, Inc., Lawrence Fontes, through counsel, urges that the order, if any is to be issued in this case, should not be applicable to him individually. Mr. Fontes testified in this matter at length concerning the details of respondent corporation's operation and business methods. Es-

entially, he disclaimed responsibility for practices to which the witnesses summoned by complaint counsel testified, and attributed responsibility to an aggressive sales manager, later fired, and no longer in the employ of Seekonk Freezer Meats, Inc. However, the fact remains that Mr. Fontes throughout, since November 10, 1969, has been in complete charge of Seekonk Freezer Meats, Inc. The record establishes that Mr. Fontes not only was the owner of this firm, which was closely held by him and his wife, but that he was chief executive officer in fact as well as in title. Further, he had been associated with it for some time prior to acquiring it in 1969 (Tr. 811-813). Mr. Fontes operated the business on a day-to-day basis and made all, or most, major decisions relating to it, including the placing of advertising, and the supervision, hiring and firing of all employees. The record establishes that he formulated, directed and controlled the acts and practices of Seekonk Freezer Meats, Inc. Under these circumstances, it would not be in the public interest to dismiss this proceeding as to Lawrence Fontes. See Answer, request for admissions and responses thereto, CX 485, pp. 1-3, and testimony of Lawrence Fontes, particularly Tr. 61-82, 97-99, 813-827.

Other Defenses

The undersigned has given thorough consideration to all the proposed findings, arguments, and authorities submitted by respondents and, to the extent inconsistent with this decision, they have been rejected as unsupported by the record, incorrect, or immaterial. The testimony of respondents' witnesses, and that of the individual respondent, has been carefully considered. The testimony of satisfied customers, of employees of respondents, and of an official of a finance company which purchased customers' obligations from respondents does not counteract the reliable, probative and credible testimony of the many witnesses who established the unfair, false, misleading and deceptive acts and practices of respondents found herein.

APPLICABLE PRINCIPLES

The principles applicable herein to one or another of respondents' practices are basic, and scarcely need stating. False, misleading, and deceptive sales tactics in the form of "bait" advertising have long been held to constitute unfair practices violative

of Section 5 of the Federal Trade Commission Act. "Guides Against Bait Advertising" issued in 1959, 4 CCH Trade Reg. Rep. ¶ 39,011; *Pati-Port, Inc. v. Federal Trade Commission*, 313 F.2d 103 (4th Cir. 1963); *Consumers Products of America, Inc. v. Federal Trade Commission*, 400 F.2d 930 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1088 (1969); *Tashof v. Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970). In determining whether advertising is false, misleading, or deceptive, it is the overall impression conveyed which counts. *Aronberg v. Federal Trade Commission*, 132 F.2d 165 (7th Cir. 1942); *Spiegel, Inc. v. Federal Trade Commission*, 411 F.2d 481 (7th Cir. 1969). Although intent to deceive could be inferred from this record, such intent to deceive is not an element, it is sufficient that the practices have the capacity to deceive. *Pep Boys—Manny, Moe & Jack, Inc. v. Federal Trade Commission*, 122 F.2d 158 (3rd Cir. 1941); *Federal Trade Commission v. Sterling Drug, Inc.*, 317 F.2d 669 (2nd Cir. 1963). If the initial contact is secured by deception, it is no defense that the customer became aware of the misleading advertising which brought him to respondents' premises at the time he actually made a purchase. *Exposition Press, Inc. v. Federal Trade Commission*, 295 F.2d 869 (2nd Cir. 1961), *cert. denied*, 370 U.S. 917 (1962). Discontinuance or abandonment of a practice does not prevent the issuance of a cease and desist order. *Clinton Watch Company v. Federal Trade Commission*, 291 F.2d 838 (7th Cir. 1961), *cert. denied*, 368 U.S. 952; *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963). This principle is especially applicable where abandonment or discontinuance occurred when under investigation, *Coro, Inc.*, 63 F.T.C. 1164, 1201 (1963), modified and aff'd, *Coro, Inc. v. Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954, and where there is no guarantee that the practices may not be resumed. *Goodman v. Federal Trade Commission*, 244 F.2d 584 (9th Cir. 1957).

CONCLUSIONS

1. The Federal Trade Commission has, and has had, jurisdiction over respondents, and the acts and practices charged in the complaint, and involved herein, took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.
2. Respondents, as demonstrated in the findings of fact set out

earlier, engaged in false, misleading and deceptive advertising, and utilized unfair and deceptive acts and practices in the offering for sale, sale and distribution of meat and meat products.

3. Such false, misleading and deceptive advertising, and such unfair and deceptive acts and practices had the tendency and capacity to mislead, and in fact misled, members of the purchasing public into the purchase of substantial quantities of respondents' meat and meat products and were to the prejudice and injury of the public and of respondents' competitors, and constituted violations of Sections 5 and 12 of the Federal Trade Commission Act.

4. In the course and conduct of their business respondents have failed to comply with Regulation Z duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 103(q) of the Truth in Lending Act, such failure constitutes a violation of that Act and, pursuant to Section 108 of that Act, also constitutes a violation of the Federal Trade Commission Act.

5. As a consequence of the foregoing, and of the findings of fact set out earlier herein, the following order should be entered.

ORDER

It is ordered, That respondent Seekonk Freezer Meats, Inc., a corporation, its officers, successors, and assigns, and Lawrence Fontes, individually and as an officer of said corporation, and his successors and assigns, and respondents' agents, salesmen, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of meat or other food products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which represents directly or by implication:

(a) That any products are offered for sale, when the purpose of such representation is not to sell the offered products, but to obtain prospects for the sale of other products at higher prices.

(b) That any product is offered for sale when such offer is not a bona fide offer to sell such product.

(c) That any meat offered for sale is high quality meat, which in fact is either ungraded or below the grades of "Prime," "Choice" and "Good," or which is yield grade 5 of the quality grade.

(d) That the meat a purchaser will receive or take home, when untrimmed beef sides, hindquarters, forequarters, or other untrimmed pieces, "Bundles," or "Packs" are sold, will consist, after cutting, dressing and trimming, entirely or primarily of steaks, or other high quality cuts, unless such is the fact.

2. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which:

(a) Fails to disclose clearly, without ambiguity, and with prominence:

(1) That untrimmed beef sides, hindquarters, forequarters, or other untrimmed pieces, "Bundles," or "Packs," offered for sale, will suffer weight loss due to cutting, dressing and trimming.

(2) That the price charged for such untrimmed meat is based on the hanging weight before cutting, dressing and trimming occurs.

(3) The correct average percentage of weight loss of such untrimmed side, quarter, piece, "Bundle," or "Pack" due to cutting, dressing and trimming.

(b) Fails to include clearly and with prominence:

(1) When United States Department of Agriculture graded meat is advertised which is below the grade of "USDA Good," the statement "This meat is of a grade below U.S. Prime, U.S. Choice, and U.S. Good."

(2) When meat not graded by the United States Department of Agriculture is advertised, the statement "This meat has not been graded by the United States Department of Agriculture."

(3) When the meat in (1) or (2) of this subparagraph is a portion of the total meat offered, a statement indicating the portion which is ungraded, or below the grades of "Prime," "Choice" and "Good," and the percentage of such meat, by weight, of the total meat offered.

3. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which mis-

represents in any manner the price, quantity or quality of any meat or other food products, or the savings available to purchasers thereof.

4. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which represents, directly or by implication, that the prices stated in such advertisements are not the regular and ordinary prices at which respondents offer for sale, and sell meat or other food products, but are instead "sale" or "special" prices, and therefore are lower than respondents' regular and ordinary prices when, in fact, such advertised prices are the prices regularly and ordinarily charged by respondents for the products advertised and do not constitute a reduction or dollar saving from respondents' regular and ordinary prices.

5. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which represents, directly or by implication:

(a) That purchasers may arrange for credit granted by respondents for purchases of meat or other food products when respondents do not in fact extend credit in the ordinary course and conduct of their business.

(b) That purchasers may arrange to make deferred payments for their purchases directly to respondents when, in the ordinary course and conduct of their business, respondents do not accept deferred payments but transfer purchasers' obligations to a finance company or other third party to whom such deferred payments must be made.

6. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which fails to disclose clearly and with prominence that purchasers' obligations will be transferred to a finance company, or other third party, when, in the ordinary course and conduct of their business, such is respondents' practice.

7. Discouraging the purchase of, or disparaging in any manner, any meat or other food products which are advertised or offered for sale.

8. Displaying any side, hindquarter, forequarter, or other portion of a beef carcass of inferior quality and unwholesome appearance, or of fatty, wasty yield grade, to prospec-

tive customers who have answered an advertisement or sales presentation of respondents, as the meat featured in such advertisement or presentation, so as to discourage such prospective customers from seeking to purchase the meat which was the subject of the advertisement or presentation.

9. Assigning, selling, or otherwise transferring notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other documents evidencing the indebtedness.

10. Failing to include the following statement clearly and with prominence on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

11. Failing to maintain for a period of two (2) years adequate records, and to permit the inspection and copying thereof by Commission representatives:

(a) Which disclose the facts upon which are based price representations and statements as to the quality and the U.S.D.A. grade of meat offered for sale, savings claims, representations as to the percentage of steaks, or other high quality cuts in advertised meat, and similar representations of the type covered by this order, and from which the validity of such statements and representations can be established; and

(b) Records from which respondents' compliance with the requirements of this order can be ascertained.

It is further ordered, That respondents deliver a copy of this Order to Cease and Desist to all persons now engaged, or who become engaged, in the sale of meat or other food products as respondents' agents, salesmen, representatives or employees, and to secure from each of said persons a signed statement acknowledging receipt of a copy thereof.

It is further ordered, That respondents Seekonk Freezer Meats, Inc., a corporation, its officers, successors, and assigns,

and Lawrence Fontes, individually and as an officer of said corporation, and his successors and assigns, and respondents' agents, salesmen, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, assist or promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. Section 226) of the Truth in Lending Act (Pub. L 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Stating in any advertisement the amount of the down payment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless there is also stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z, all of the following items—(i) the cash price; (ii) the amount of the downpayment required or that no downpayment is required, as applicable; (iii) the number, amount, and due dates or period of repayments scheduled to repay the indebtedness if the credit is extended; (iv) the annual percentage rate; and (v) the deferred payment price.

2. Making any disclosure not in accordance with the requirements of Section 226.10 of Regulation Z.

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

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

FINAL ORDER

No appeal from the initial decision of the administrative law judge having been filed, and the Commission on March 6, 1973 having stayed the date on which the initial decision would have

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become effective pursuant to Section 3.51 of the Commission's Rules of Practice; and

The Commission now having determined that the case should not be placed on its own docket for review and that the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the administrative law judge shall, on the 15th day of March 1973, become the decision of the Commission.

IN THE MATTER OF
HEUBLEIN, INC.

Docket 8904. Interlocutory order, March 15, 1973.

Order directing would-be intervenor, Allied Grape Growers, and the respondent and complaint counsel to file supplemental briefs on what and how interests of Allied would be affected; and why Allied's interests in final order would not be adequately represented by complaint counsel and *amicus* briefs from Allied.

ORDER GRANTING APPLICATION FOR INTERLOCUTORY APPEAL

This matter is before the Commission upon the application of would be intervenor Allied Grape Growers for an interlocutory appeal from the administrative law judge's denial of application for leave to intervene filed January 31, 1973, and upon respondent's opposition thereto filed February 7, 1973.

Upon consideration of the materials before it, the Commission believes that the issues raised by applicant are of sufficient significance to warrant review by the Commission of the administrative law judge's determination denying intervention. However, the Commission believes that the record now before it may be inadequate to permit proper evaluation; therefore

It is ordered, That applicant, respondent, and, in its discretion complaint counsel, shall file supplemental briefs directed to the following questions:

1. What are the precise interests of Allied which would be threatened by the proposed or other possible orders in this case, and in what fashion might potential divestiture decrees have the effect of abrogating *specific* contractual or

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other legal obligations owed to Allied by Heublein or any other party?

2. Assuming that Allied's interests in the final order would not adequately be represented by Heublein, why would they not adequately be represented by complaint counsel, or by complaint counsel and *amicus* briefs from Allied?

Briefs shall not exceed fifteen (15) pages in length. Applicant's brief and any brief which complaint counsel may wish to file on the above questions shall be filed within ten (10) days of this order; respondent's reply brief shall be filed within five (5) days of respondent's receipt of applicant's brief.

IN THE MATTER OF

ATLANTIC CARPET CORPORATION, ET AL.

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

Docket C-2364. Complaint, March 16, 1973—Decision, March 16, 1973

Consent order requiring a Calhoun, Georgia, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Atlantic Carpet Corporation, a corporation, and Walter A. Tinsley, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Atlantic Carpet Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Walter A. Tinsley is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at Beasley Street, P.O. Box 29, Calhoun, Georgia.

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

Among such products mentioned hereinabove were carpets and rugs in styles "Escape" and "Escape II," subject to Department of Commerce Standard For the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having there-

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

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

1. Respondent Atlantic Carpet Coporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Walter A. Tinsley is an officer of the said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at Beasley Street, P.O. Box 29, Calhoun, Georgia.

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

ORDER

It is ordered, That respondent Atlantic Carpet Corporation, a corporation, its successors and assigns, and its officers, and respondent Walter A. Tinsley, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in com-

merce or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

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

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

It is further ordered, That respondents herein shall within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning, (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since March 17, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

It is further ordered, That respondents notify the Commission

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

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

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

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with 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

DANISH IMPORTS CENTER, INC., ET AL.

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

Docket C-2365. Complaint, Mar. 19, 1973—Decision, Mar. 19, 1973.

Consent order requiring a Eugene, Oregon, importer and retailer of furnishings and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Danish Imports Center, Inc., a corporation, and Allen McCullough, individually and

as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Danish Imports Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon. Respondent Allen McCullough formulates, directs, and controls the acts, practices and policies of said corporation.

Respondents are engaged in the importation and retailing of furnishings and rugs, with their office and principal place of business located at 804 Willamette Street, Eugene, Oregon.

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

Among such products were Norsk Rya rugs subject to Department of Commerce Standard for the Surface Flammability of Carpet and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission

for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, and the Flammable Fabrics Act, as amended; and

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

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

1. Respondent Danish Imports Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon:

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

Respondents are importers and retailers of various products including Norsk Rya rugs. Their office and principal place of business is located at 804 Willamette Street, Eugene, Oregon.

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

ORDER

It is ordered. That respondents Danish Imports Center, Inc., a corporation, its successors and assigns, and its officers, and Allen McCullough, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for

sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce any product, fabric or related material; or manufacturing for sale, selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

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

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

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since July 26, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report a complete description of each style of carpet or rug currently in inventory. Upon request, respondents will forward to

the Commission for testing a sample of any such carpet or rug.

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

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

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

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with 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
HADDAD BROTHERS, INC., ET AL.

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

Docket C-2366. Complaint, Mar. 20, 1973—Decision, Mar. 20, 1973.

Consent order requiring a New York City manufacturer and seller of children's garments, including but not limited to infant christening sets, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Haddad Brothers,

Inc., a corporation, and Mac A. Haddad, Joseph A. Haddad, David A. Haddad and Sam A. Haddad, individually and as officers of the said corporation, hereinafter referred to as respondents have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Haddad Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Mac A. Haddad, Joseph A. Haddad, David A. Haddad and Sam A. Haddad are officers of the said corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of children's garments, including but not limited to infant's christening sets, with their office and principal place of business located at 112 West 34th Street, New York, New York.

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

Among such products mentioned hereinabove were infant's christening sets.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Haddad Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Mac A. Haddad, Joseph A. Haddad, David A. Haddad and Sam A. Haddad are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of children's garments, including but not limited to infant's christening sets, with the office and principal place of business of respondents located at 112 West 34th Street, New York, New York.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of the proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

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

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

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

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the

channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since April 28, 1970, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

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

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

Complaint

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IN THE MATTER OF
INTERNATIONAL MARKETING CORPORATION, ET AL.

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

Docket C-2367. Complaint, Mar. 21, 1973—Decision, Mar. 21 1973.

Consent order requiring an Oklahoma City, Oklahoma, distributor and seller of personal improvement courses, among other things to cease misrepresenting that no special ability or aptitude is required to become a successful distributor; distributors will have no difficulty in selling respondents' products; and respondents' distributors are uniformly successful and enjoy substantial incomes. The order further requires respondent to administer a personality evaluation test and to evaluate the personal history of the prospect to determine his ability to be as successful as others have and to provide each prospect with the results reasonably in advance of the execution of a contract. Further, prospects must be given a three-day "cooling-off" cancellation period.

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 International Marketing Corporation, a corporation, and Charles M. Bisbee, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent International Marketing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its principal office and place of business located at 5900 Mosteller Drive, Suite 310, in the city of Oklahoma City, State of Oklahoma.

Respondent Charles M. Bisbee is an individual and is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past, have been, engaged in the advertising, offering for sale, sale and distribution to retail distributors for resale to the purchasing

public of personal improvement courses consisting of printed matter and recordings.

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

PAR. 4. In the course and conduct of their aforesaid business, respondents have engaged in, and now engage in, a continuing program of recruiting retail distributors or franchisees to sell respondents' products. Those persons who are successfully recruited by respondents are required to invest a substantial sum of money as a condition to being granted a franchise or distributorship to distribute respondents' products. The monies paid respondents include an amount to cover the cost of initial inventory of respondents' products.

Respondents solicit the sale of their distributorships or franchises in the following manner and by the following means. Respondents publish, or cause to be published, in magazines and newspapers of regional and national circulation, advertisements inviting inquiries from persons interested in becoming distributors. To persons who respond to such invitations, respondents send through the mail advertising and promotional material containing many statements and representations regarding respondents' products and the financial and other benefits to be enjoyed by persons who become franchisees or distributors of respondents' products. Persons, who express further interest, are mailed additional advertising and promotional material, and may receive a telephone sales presentation by one of respondents' sales representatives and may, in some instances, be invited to visit respondents' place of business.

PAR. 5. By and through the means of the statements and representations contained in the advertising and promotional material referred to in Paragraph Four hereof and statements and representations made by respondents' sales representatives during the course of oral sales presentations to prospective distributors, or franchisees, respondents, for the purpose of induc-

ing the sale of distributorships, or franchises, represent to such prospective distributors or franchisees:

(1) That no special ability or aptitude is required to become a successful distributor or franchisee other than the desire to succeed.

(2) That distributors or franchisees will encounter no difficulty in selling respondents' products.

(3) That respondents' distributors or franchisees are uniformly successful and all enjoy substantial income from their distributorships or franchises.

PAR. 6. In truth and in fact,

(1) The desire to succeed is not the only prerequisite to success as a franchisee or distributor of respondents' products.

Respondents' personal improvement courses and other products are intangibles and only persons who have the appropriate personality and verbal communications skills and other attributes of a successful intangible salesman in addition to the desire to succeed can be expected to become successful franchisees or distributors of respondents' products.

During the course of soliciting the purchase of a franchise or distributorship by a prospective franchisee or distributor, respondents make no bona fide effort to determine whether the prospective purchaser possesses the appropriate personality, verbal communications skills, and other attributes which would indicate that he possesses the potential of becoming a successful distributor or franchisee.

(2) Respondents' products are difficult to sell because of the intangible nature of such products.

(3) Respondents' franchisees or distributors are not uniformly successful and all do not enjoy a substantial income. While among respondents' franchisees or distributors may be some who achieve success and substantial income, there are a substantial number who do not achieve either. Further, respondents failed to disclose to prospective franchisees or distributors relevant information which would assist prospective franchisees or distributors in evaluating the probabilities of their success including, among other things, the median and mean gross sales to respondents' distributors or franchisees during the previous twelve-month period and the median and mean length of time that their franchisees or distributors have been associated with respondents.

Therefore, respondents' statements, representations, acts and practices as set forth above were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of franchises or distributorships to persons interested in establishing their own businesses.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous mistaken belief that said statements and representations were and are true and in investing substantial sums of money in becoming franchisees or distributors of respondents' products, including the purchase of substantial quantities of respondents' products.

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, 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 Marketing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 5900 Mosteller Drive, Suite 310, Oklahoma City, Oklahoma.

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

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

ORDER

It is ordered. That respondents International Marketing Corporation, a corporation, and Charles M. Bisbee, individually and as an officer of said corporation, its successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of franchises, licenses or distributorship to sell personal improvement courses, books, phonograph records, or any other product, or of the books, phonograph records, supplies or equipment for use in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that:

(a) No special ability or aptitude is required to become a successful franchisee or distributor of respondents' products; misrepresenting, directly or indirectly,

the experience, background, aptitudes or abilities required to become a successful franchisee, or distributor of respondents' products.

(b) Franchisees or distributors will encounter no difficulty in selling respondents' products; misrepresenting, directly or indirectly, the degree of effort required to sell respondents' products.

(c) Respondents' franchisees or distributors are uniformly successful and all enjoy substantial income; misrepresenting, directly or indirectly, the degree of success or amount of income realized by respondents' franchisees or distributors.

(d) Franchisees or distributors of respondents' products will earn or receive any stated or gross or net amount of earnings or profits; or representing, directly or indirectly, the past earnings of franchisees or distributors unless in fact the past earnings represented are those of a substantial number of franchisees or distributors in the community or geographical area in which such representations are made and accurately reflect the average earnings of these franchisees or distributors under circumstances similar to those of the prospective franchisee or distributor to whom the representation is made.

2. Using any deceptive scheme, device or plan to obtain leads to prospective franchisees or distributors or to induce persons to become franchisees or distributors.

3. (a) Failing to determine in good faith, prior to having a prospective franchisee or distributor enter into an agreement to become a franchisee or distributor of respondents' products, through the evaluation of the personal history of the prospect and the administration of personality evaluation tests, whether the prospect possesses the aptitude and abilities necessary to successfully sell respondents' products and to recruit other persons to sell respondents' products.

(b) Failing to inform prospective franchisees or distributors of the results of such evaluation and testing reasonably in advance of the execution of the agreement to become a franchisee or distributor.

4. Failing to furnish to prospective franchisees or distributors reasonably prior to such persons agreeing to become

franchisees or distributors a written tabulation or statistical summary showing for each of the corporate respondents' operating divisions the following information:

(a) The median and mean gross sales to respondents' franchisees or distributors, exclusive of initial inventories sold to new franchisees or distributors, during the 12-month period preceding the month in which the information is to be furnished.

(b) The number of franchisees or distributors at the beginning of the 12-month period, the number appointed during the 12-month period, the number terminated during the 12-month period, the number retained at the end of the 12-month period, and the median and mean length of time that those retained at the end of the 12-month period have been respondents' franchisees or distributors.

5. Using any program which fails to:

(a) Inform each person orally before entering into any contract to participate in such program and disclose clearly and conspicuously in such written contract entered into with him that he may cancel for any reason by notification to respondents in writing within three business days from the date of execution of such contract.

(b) Refund immediately all monies to persons who:

(1) Cancel their contracts in accordance with paragraph (a); or

(2) Show that respondents' contract solicitation or performance were attended by or involved violation of any of the provisions of this order; *Provided, however,* That subpart (2) hereof shall not apply to such contracts entered into before the date of this order, nor shall the payments of refunds hereunder be construed as an admission that this order or any part thereof has been violated.

6. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the advertising or sale of franchises or distributorships to sell respondents' products, and failing to secure from each salesman or other person a signed statement acknowledging receipt of said order.

7. Furnishing others any means or instrumentalities, services or facilities, which are calculated to mislead participants or prospective participants as to any of the matters or things prohibited by this order.

It is further ordered, That:

(A) Respondents immediately obtain from each person described in Paragraph 6 above a signed statement setting forth his intention to conform his business practices to the requirements of this order.

(B) Respondents advise each such present and future salesman, agent, solicitor, independent contractor, distributor or any person engaged in the promotion, sale or distribution of any of respondents' franchises or distributorships, that respondents will not engage or will terminate the engagement or services of any said person, unless such person agrees to and does file a notice with the respondents that he will be bound by the provisions contained in this order.

(C) If such party will not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not use such third party, or the services of such third party to promote, sell or distribute any of respondents' franchises or distributorships.

(D) That respondents so inform the persons so engaged that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own any of the deceptive acts or practices prohibited by this order.

(E) That respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order; and

(F) That respondents discontinue dealing with the persons so engaged, revealed by the aforesaid program or surveillance, who continue on their own, in any act or practice prohibited by this order.

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

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or otherwise, the creation of subsidiaries, or any other change which may affect compliance obligations arising out of this order.

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

IN THE MATTER OF
CORNING GLASS WORKS

Docket 8874. Interlocutory Order and Statement, March 22, 1973.

Denial of motion by National Small Business Association, Inc., for intervention, but with opportunity to file brief *amicus curiae* within the period up to five days prior to oral argument before the Commission.

DISSENTING STATEMENT

BY JONES, *Commissioner*:

Again the Commission has denied a petition for intervention by members of the public asserting a vital interest in the outcome of an adjudication pending before the Commission.

The petitioner here is the National Small Business Association, Inc., representing some 45,000 "individuals, firms and corporations drawn from all elements of the small business community." Petitioner asserts that its members are vitally affected by Fair Trade Laws and hence in the outcome of the pending adjudication which involves a construction of the McGuire Act.

It seems to me that petitioner has asserted here a broad policy interest in the issues involved in this case and are claiming that their members could be seriously injured and aggrieved by the Commission's action in the instant case.

I am convinced that both the law and sound administrative policy compels us to grant their intervention petition. I dissent from the Commission's refusal to permit their limited intervention request.

ORDER DENYING MOTION TO INTERVENE

This matter is before the Commission upon the motion for leave to intervene filed March 14, 1973, by the National Small

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Business Association, Inc., on the ground that the legal rights and remedies, and the economic opportunities for a substantial portion of its some 45,000 members will be substantially and adversely affected should the relief or any part thereof as requested in the complaint be granted by the Commission.

The captioned matter is presently on the Commission's own docket upon complaint counsel's petition for review of the initial decision dated December 27, 1972, and oral argument has been scheduled for April 19, 1973, with final briefs being due in accordance with the Commission's Rules of Practice and Procedure. The Commission having considered these circumstances as well as other relevant matters raised in movant's request has determined that the motion should be denied. However, if movant so desires it may within the period up to five (5) days prior to the oral argument file with the Commission a brief *amicus curiae*. Movant will also be granted 15 minutes in which to present oral argument. Accordingly,

It is ordered, That the motion for leave to intervene by the National Small Business Association, Inc., in the captioned proceeding be, and it hereby is, denied.

Commissioner Jones dissenting and filing a dissenting statement.

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

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

Docket C-2368. Complaint, Mar. 26, 1973—Decision, Mar. 26, 1973.

Consent order requiring a Salt Lake City, Utah, retailer of rugs, carpets, and floor coverings, among other things to cease misbranding and falsely advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the rules and regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Com-

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mission, having reason to believe that Carpetowne, Inc., a corporation, and Daniel A. Pentelute and Phillip A. Bullen, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and rules and regulations, 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 Carpetowne, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 3270 Highland Drive, Salt Lake City, Utah.

Respondents Daniel A. Pentelute and Phillip A. Bullen are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the said corporation, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

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

PAR. 3. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 4. Certain of said textile fiber products were misbranded in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and/or in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings misbranded in the following respects:

1. The true generic name of the fibers present were not disclosed in violation of Rule 6 of said rules and regulations.

2. The percentages of such fibers, by weight, were not disclosed in violation of Rule 16 of said rules and regulations.

3. The required business name, or in the alternative, registered identification number, was not disclosed in violation of Rule 19 of said rules and regulations.

PAR. 5. Certain of said textile fiber products, namely floor coverings, sold from properly labeled samples, swatches, or specimens, were not properly labeled or accompanied by invoice or other paper showing the information otherwise required to appear on the label in violation of Rule 21(b) of said rules and regulations.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 7. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in The Salt Lake Tribune, a newspaper published in the city of Salt Lake City, State of Utah, and having a wide circulation in Salt Lake City, State of Utah and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was the term "Acrilan," and the true generic names of the fiber content in such carpeting was not set forth.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in ac-

cordance with the rules and regulations promulgated thereunder in the following respects:

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

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

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

PAR. 9. The acts and practices of respondents as set forth above, were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition, and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

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 and the Textile Fiber Products Identification Act, and the rules and regulations promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an ad-

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

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

1. Respondent Carpetowne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 3270 Highland Drive, Salt Lake City, Utah.

Respondents Daniel A. Pentelute and Phillip A. Bullen are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Carpetowne, Inc., a corporation, its successors and assigns, and its officers, and Daniel A. Pentelute and Phillip A. Bullen, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (hereinafter, in this and other paragraphs of this order, referred to as "respondents"), in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in

connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by failing to affix a stamp, tag, label or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act; or as an alternative to the foregoing, where properly labeled samples, swatches, or specimens are used to effect the sale of articles of wearing apparel or other household textile articles which are manufactured specifically for a particular customer after the sale is consummated, and the articles of wearing apparel or other household textile articles are of the same fiber content as the samples, swatches, or specimens from which the sale was effected, failing to provide an invoice or other paper to accompany them showing the information otherwise required to appear on a label, as required by Rule 21(b) of the rules and regulations under the Textile Fiber Products Identification Act, effective March 3, 1960, as amended.

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

of floor covering containing exempted backings, fillings or paddings, that such disclosures relate only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

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

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

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

It is further ordered, That the respondents shall forthwith distribute a copy of this order to all present and future personnel of respondents engaged in the offering for sale, or sale, of any carpeting or any other merchandise offered for sale by respondents or engaged in any aspect of the preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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

It is further ordered, That the respondents herein shall within

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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
PAUL BRUSELOFF, ET AL.

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

Docket C-2369. Complaint, Mar. 26, 1973—Decision, Mar. 26, 1973.

Consent order requiring two Southfield, Michigan, individuals, doing business under various trade names, engaged in selling ovenware, among other things to cease misrepresenting that their products are being sold at a loss; that their prices are usual and customary, special or reduced; misrepresenting the quality or properties of their products; failing to disclose their names and address; and misrepresenting guarantees.

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 Paul Bruseloff and Martin Bruseloff, individually and as co-partners, doing business under various trade names, sometimes hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Paul Bruseloff and Martin Bruseloff are individuals with their principal place of business located at 22218 Ivanhoe Lane, in the city of Southfield, State of Michigan. From time to time, they operate as co-partners trading and doing business under various trade names.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the business of advertising, offering for sale, and sale of ovenware.

PAR. 3. In the course and conduct of said business, respondents now cause and for sometime last past have caused said ovenware to be sold to distributors who resell said product di-

rectly to consumers or to subdistributors or others who, in turn, sell to consumers.

PAR. 4. In the course and conduct of their business, respondents promote the sale of said ovenware and aid and assist distributors and subdistributors or other individuals in selling it by preparing and providing sales promotion literature to said distributors, subdistributors and others. Respondents assist said distributors and subdistributors, and others in the sale of said ovenware by providing instructions and advice, by arranging shipments to various locations throughout the country, as requested by the distributor, by extending credit from time to time, and by other means.

PAR. 5. In the course and conduct of their business as aforesaid, respondents now cause, and for sometime last past have caused, said ovenware, when sold, to be shipped from its place of manufacture in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and have transmitted and received, and have caused to be transmitted and received, in the course of selling, delivering and collecting payment for said ovenware among and between the several States of the United States, contracts, invoices, checks and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said ovenware in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of said ovenware by consumers, respondents operate from time to time as co-partners trading and doing business under various business or trade names including, among others, the E. Fink Company, Queen Victoria Company and Lady Odellia Company. The products offered for sale and sold by respondents are designated with various trade or brand names including but not limited to, "Lady Cornellia," "Lady Odellia," "Countess Regalla" and "Queen Victoria."

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of said ovenware by consumers, respondents, some distributors, subdistributors and others make, and have made, certain statements with respect to prices, guarantees, product performance, and other qualities

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related to said ovenware. Typical and illustrative of such statements are the following:

1. *Advertising Leaflets:*

New Modern Miracle Way Countess Regalla (Queen Victoria) 41-piece Ovenware Cook-'N'-Serve Ensemble.

Countess Regalla (Queen Victoria) decorated Milk White bakeware is so practical * * * all you do is take it from refrigerator to oven * * * on to table without damage * * * Countess Regalla (Queen Victoria) * * * fired at 1200° F * * * makes set impervious to oven heat, icy-cold. Set will be intact.

\$89.50.

2. *Packaging Materials:*

Modern way to store, cook and serve foods from refrigerator * * * to oven * * * to your table.

Created for Queen Victoria Company, 15402 Northgate Drive, Southfield, Michigan 48075.

3. *Statements of Distributors, Subdistributors and Others to Prospective Customers:*

a. That said ovenware is being sold at lower-than-normal prices or "distress" prices because it is left over from a home show, the manufacturer is closing out his stock, or it was left stranded on a broken truck, among other purported reasons given.

b. That said ovenware is capable of withstanding heat in the same manner as certain identified higher-priced, nationally known products.

c. That said ovenware can be dropped on the floor, thrown about, or otherwise abused without breaking or cracking.

d. That said ovenware is guaranteed for use under any circumstances and will be replaced if any pieces are damaged or break.

PAR. 8. By and through the use of the aforementioned statements and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements of said distributors, subdistributors and others, the respondents have represented, and are now representing, directly or by implication:

1. That said ovenware is being offered for sale at special, reduced or "distress" prices and that savings from the regular selling prices are thereby afforded to purchasers.

2. That said ovenware is capable of withstanding heat and cold in the same manner as certain identified higher-priced,

competing nationally known products and is better than such products in that it can be dropped on the floor, thrown about, or otherwise abused without breaking or cracking.

3. That the address listed on the ovenware carton is the address at which the respondents are located and can be contacted.

4. That said ovenware is unconditionally guaranteed without limitation or condition.

PAR. 9. In truth and in fact:

1. Savings are not afforded because of a reduction from the regular selling price because few, if any, sales of said ovenware are or have been made at the so-called "regular" price printed on the carton, or leaflets, and/or orally represented to prospective purchasers. Statements that said ovenware is being sold at lower-than-normal prices, "distress" prices, or that it is left over from a home show, are used to entice the consumer into believing that he is obtaining a much better bargain for his money than, in fact, he is obtaining.

2. Said ovenware is not comparable to, and does not have the same qualities as, certain identified higher-priced, nationally known products, since it cannot be removed from the freezer and immediately be put into an oven without cracking, and it will crack upon exposure to direct heat or to an open flame.

3. The mailing address which appears on the ovenware carton is an incorrect address, and mail sent to this address is returned to the sender, marked "Addressee Unknown."

4. Said ovenware carries no guarantee of any sort.

PAR. 10. Respondents accept the revenues flowing from the sale of said ovenware to distributors, and have knowledge of, and benefit from, some of the statements, representations, acts and practices set forth in Paragraphs Six, Seven, and Eight hereof. Respondents, while having full knowledge and notice of the acts and practices of the distributors, subdistributors and others, have failed to prevent the said parties from utilizing such methods.

PAR. 11. In the course and conduct of their business as herein described, respondents have been, and are now, in substantial competition in the sale and distribution of ovenware in commerce between and among the various States of the United States with other corporations, persons, firms and partnerships

in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 12. The acts, practices and methods of competition engaged in, followed, pursued or adopted by the respondents are unfair acts and practices, to the prejudice of the public because of the misleading and deceptive acts and practices utilized and employed by some of the distributors, subdistributors and other individuals in the course of, and for the purpose of, inducing the sale of and selling respondents' ovens; respondents' knowledge of such acts and practices by the distributors, subdistributors and other individuals; respondents' acceptance of some of the pecuniary and other benefits flowing therefrom; and respondents' failure to adopt methods reasonably designed to eliminate the utilization and employment of said acts and practices by the said parties. Said acts and practices, and the adverse competitive effect resulting therefrom, constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 13. The acts and practices of the respondents as set forth above, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondents Paul Bruseloff and Martin Bruseloff are individuals with their principal place of business located at 22218 Ivanhoe Lane, in the city of Detroit, State of Michigan. From time to time they operate as co-partners trading and doing business under various trade names.

Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale and sale of ovenware to consumers.

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

ORDER

It is ordered, That respondents Paul Bruseloff and Martin Bruseloff, individually or trading and doing business as co-partners under any name or names, their successors and assigns, and respondents' agents, representatives and employees, through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale and distribution of ovenware, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally, in writing or visually, that ovenware or any other product is being sold at a "distress" price or at a loss for any reason.

2. Representing, directly or by implication, orally, in writing or visually, that any amount is the usual and customary retail price for ovenware or any other product, unless such amount is the price at which such ovenware or other product has been

usually and customarily sold at retail in the recent regular course of business.

3. Representing, directly or by implication, orally, in writing or visually, that any price for respondents' ovenware or any other product is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which said ovenware or other product has been sold in substantial quantities at retail in the regular course of business; or misrepresenting, in any manner, the savings available to purchasers.

4. Representing, directly or by implication, orally, in writing or visually, the quality, color, physical properties and/or characteristics of ovenware or any other product, in a manner which is inconsistent with, negates or contradicts any statements set forth in any instructions accompanying the ovenware or other product or which limits, qualifies or detracts from any statement set forth in any such instructions; or misrepresenting the quality, color, physical properties and/or characteristics of ovenware or any other product in any manner.

5. Failing to accurately disclose respondents' name and business address clearly, conspicuously, and accurately on all advertising, sales, packaging and promotional materials for ovenware or any other product sold by respondents.

6. Failing to include inside any packaging materials containing ovenware or any other product, a statement setting forth respondents' business name and correct mailing address.

7. Failing to include inside any packaging materials containing ovenware or any other product, a self-addressed postcard with adequate space for identification of the customer and his address, and bearing a statement which instructs the customer to mail the card to respondents' principal place of business.

8. Failing to maintain adequate records which disclose the name, home address and telephone number, or business address and telephone number, of each customer to whom respondents sell ovenware or any other product.

9. Representing directly, or by implication, orally, in writing or visually, that respondents' ovenware or any other product is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and unless respondents promptly and fully perform

all of their obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

It is further ordered, That respondents maintain a complete file at their principal place of business of all customer correspondence, inquiries, complaints, postcards, customer lists, etc., relating to respondents' ovenware or any other product, for a period of three (3) years from the date of receipt.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all of their distributors, agents, representatives, employees and suppliers, or others, engaged in the offering for sale or sale of ovenware or any other product, and that respondents secure a signed statement acknowledging the receipt of said order from each such person.

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

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

IN THE MATTER OF

ILLINOIS CENTRAL INDUSTRIES, INC., ET AL.

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

Docket C-2370. Complaint, Mar. 26, 1973—Decision, Mar. 26, 1973.

Consent order requiring one of the nation's largest publicly held industrial corporations, headquartered in Chicago, Illinois, among other things, to take immediate steps to create a viable new entrant into the business of manufacturing automobile brake friction materials for passenger automobile disc brakes by either divesting necessary equipment or providing the new entrant with sufficient financial aid and technical assistance to buy equipment elsewhere; to grant to the new firm a

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nonexclusive, royalty-free right to use all United States patents held by ICI relating to the manufacture of passenger automotive brake friction materials; the acquired company to contract, at the option of the new company, to purchase for five years up to 75 percent of its requirements of passenger automobile disc brake pads for resale, and in addition 75 percent of its requirements of its automobile brake friction materials in the event the new firm undertakes to expand into the manufacture of these products.

Further, order prohibits the acquired company from selling or purchasing, except in emergency situations, either flashers manufactured or distributed by ICI or certain items which contain automotive brake friction materials manufactured or distributed by ICI; the acquisition by the respondent and the acquired company for a five-year period of any domestic franchised Midas Muffler Shop, except in distress situations; reciprocal purchase or sale arrangements; exchange of statistical data to ascertain or further any reciprocal relationship; and requires the destruction of certain statistical data and the divestiture of the Signal Stat flasher facilities within a maximum of two years.

COMPLAINT

The Federal Trade Commission having reason to believe that Illinois Central Industries, Inc., a corporation subject to the jurisdiction of the Commission, has acquired the stock of Midas-International Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18), and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45 (a) (1)), hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. Section 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45 (a) (6) (b)), stating its charges in that respect as follows:

I. DEFINITIONS

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

(a) "Automotive brake friction materials" are blocks, strips, rolled and disc brake materials and pads composed of non-sintered materials and used to retard or stop motion of passenger cars, trucks, trailers and any self-propelled land vehicle, excluding railway equipment.

(b) "Flashers" are switches used in automobiles, trucks and buses to actuate turn signal or hazard warning indicators.

(c) The term "domestic" shall refer to operations or sales made within the United States.

II. ILLINOIS CENTRAL INDUSTRIES, INC.

2. Respondent, Illinois Central Industries, Inc., (hereinafter

"ICI"), is now, and was at the time of the acquisition a Delaware corporation with its principal office and place of business located at 135 East Eleventh Place, Chicago, Illinois.

3. In 1970 ICI had sales of \$712.0 million and assets of \$1,627.2 million. In that year, it was the 161st largest publicly held industrial corporation in the nation in total sales.

4. As of November 16, 1971, ICI owned and operated one of the nation's largest railroads; manufactured friction materials, wear control products and fluid power controls; and was one of the largest bottlers of soft drinks.

5. ICI's subsidiary, Abex Corporation (hereinafter "ICI-Abex"), is the nation's third largest producer of automotive brake friction materials. In 1970 ICI-Abex's domestic shipments of such automotive brake friction materials were \$13.8 million, and in 1971, \$15.9 million, accounting for 13 percent of the domestic automotive friction materials market. In 1971 ICI-Abex's domestic shipments of automotive brake friction materials for use in original equipment production were \$6.8 million, or 17.9 percent of that domestic market; and its shipments for domestic replacement use were \$9.2 million, or 10.7 percent of that domestic market.

6. In the United States, ICI-Abex produces complete replacement disc brake pads and replacement automotive friction materials in the form of blocks and lining for automotive brake shoes or disc brake pads. ICI-Abex currently produces replacement automotive brake shoes in Canada and has attempted to sell such brake shoes in the United States to various customers, including respondent, Midas-International Corporation. The replacement disc brake pads produced by ICI-Abex are being sold directly to wholesalers and repair shops. In recent years, ICI-Abex has encouraged the direct sale of its domestic replacement automotive brake friction materials to wholesalers and repair shops.

7. In 1970 ICI-Abex's primary customers for domestic replacement automotive brake friction materials were Wagner Electric Corporation, Genuine Parts Company and other brake shoe rebonders.

8. ICI-Abex projects a rapid increase in its sales of domestic automotive brake friction materials; and by 1976, it projects sales of such materials of \$35.4 million, accounting for 16 percent of the projected market of such materials. ICI-Abex projects its 1976 domestic sales of replacement automotive brake friction

materials as \$27.3 million, accounting for 17 percent of the projected domestic replacement market of such materials.

9. ICI-Abex, through its acquisition of Signal-Stat Corporation on August 27, 1971, is the nation's leading manufacturer and seller of flashers. In 1970 its sales of such flashers were \$3.0 million, representing 40 percent of domestic flashers sales.

10. At all times relevant herein, ICI and ICI-Abex sold and shipped their products throughout the United States and were and are now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

III. MIDAS-INTERNATIONAL CORPORATION

11. Prior to its acquisition by ICI on January 25, 1972, Midas-International Corporation (hereinafter "Midas") was a Delaware corporation with its principal office and place of business located at 105 West Adams Street, Chicago, Illinois.

12. In 1970 Midas had sales of \$66.8 million and assets of \$42.1 million.

13. Midas' business is almost entirely in two categories, the sale of replacement automotive parts and the manufacture and sale of recreational vehicles. In 1970 the sale of replacement automotive parts by Midas was \$44.1 million, or 66 percent of its entire sales. Midas' replacement automotive exhaust system parts sales were \$38.4 million in 1970, or 87 percent of its automotive parts sales. The sale of recreational vehicles and their parts by Midas in 1970 was \$22.7 million, or 34 percent of Midas' total sales.

14. Midas possesses a marketing organization designed to sell replacement automotive parts to two different types of customers: (1) independent wholesalers and retailers, and (2) Midas' franchised dealers. Midas operates eight domestic warehouses in connection with its marketing of replacement automotive parts.

15. In 1970 Midas was the fourth largest domestic supplier of replacement automotive exhaust system products, accounting for 11 percent of replacement automotive exhaust system product sales. In that year, five firms accounted for more than 80 percent of domestic replacement exhaust system product sales, including sales made to vehicle producers for resale to their dealers. As of November 16, 1971, Midas sold replacement automotive exhaust system parts and PCV valves to its independent wholesaler and retailer customers. At that time, Midas was selling and continues

to sell to its franchised dealers, not just automotive exhaust system parts and PCV valves, but also brake shoes and disc brake pads, brake parts, shock absorbers, front end parts and transmission parts. Although Midas does not currently sell automotive brake shoes and disc brake pads through its independent wholesaler and retailer marketing organization, this marketing organization is one of a few such marketers which could effectively market such products.

16. Midas is the nation's largest franchiser of specialized automotive repair facilities. The number of Midas' domestic franchisees has increased continuously, from 404 in 1966 to 612 as of September 30, 1971. Midas projects an increase in the number of its domestic franchisees to over 700 in 1972.

17. As of September 30, 1971, Midas had franchised 375 of its domestic outlets for the sale of its automotive brake shoes and disc brake pads. Midas first entered the sale of automotive brake shoes and disc brake pads through its franchisees in 1966, but did not stress this product line until 1970.

18. During 1972, Midas plans to stress increasingly the sale of automotive brake shoes and disc brake pads in its franchised outlets as the most important area of growth for the company. Midas intends to become as significant a supplier of automotive brake shoes and disc brake pads as it is a supplier of exhaust systems.

19. In 1971 Midas was one of the nation's largest purchasers of automotive brake shoes and disc brake pads. By 1973 Midas has projected that its purchases of automotive brake shoes and disc brake pads will increase substantially over its 1971 purchase of such products.

20. In 1972 Midas plans to begin the sale of ignition parts, such as flashers, to its franchisees. By virtue of its position as the leading domestic franchised distributor of automotive parts to specialized repair shops and its entry into the sale of ignition parts, Midas should become a substantial purchaser of flashers by 1973.

21. In 1970 Midas was the second largest domestic producer of recreational travel trailers. Midas is also a substantial seller of replacement parts for recreational travel trailers in the United States. In 1970 it sold \$7.3 million of such parts to more than 4,000 retail dealers throughout the United States.

22. Midas is a substantial purchaser of components containing

automotive brake friction materials for use in manufacturing recreational vehicles, such as travel trailers, and resale of parts for recreational vehicles. In 1970 its purchases of such components containing automotive brake friction materials were \$575,000.

23. At all times relevant herein, Midas sold and shipped its products throughout the United States and was and is now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV. THE ACQUISITION

24. On November 5, 1971 ICI and Midas-International Corporation entered into an agreement providing for the acquisition of Midas by ICI through the conversion of Midas stock into ICI common shares. On January 25, 1972, ICI acquired all the stock of Midas-International Corporation.

V. TRADE AND COMMERCE

25. The relevant geographic market involved in this complaint is the United States as a whole. The relevant product markets are:

(a) Manufacture, distribution and sale of automotive brake friction materials, within which the relevant product submarkets are:

(i) Automotive brake friction materials for original equipment production;

(ii) Automotive brake friction materials for replacement use; and

(b) Manufacture, distribution and sale of automotive flashers.

A. Automotive Brake Friction Materials

26. The domestic market for automotive brake friction materials was \$79.3 million in 1970. Of this amount, \$26 million was used in original equipment production and \$53 million was for replacement use.

27. Concentration in the manufacture of automotive brake friction materials is high, with the top five firms accounting for over 60 percent of total domestic sales in 1970. Likewise, concentration is high in the two submarkets for automotive brake friction materials with the top four firms accounting for 57 percent of domestic sales for use in original equipment production and the top four firms accounting for 48 percent of domestic sales for replacement use.

28. Since 1968, entry into the manufacture and sale of automotive brake friction materials for replacement use has become more difficult. The type of replacement automotive brake friction materials used on late model vehicles requires a greater degree of expertise to manufacture than did the replacement automotive brake friction materials used in the early 1960's. Also, the United States government has established stringent standards which all replacement automotive brake lining must meet if such lining is to be sold in the United States.

29. In 1971 only one of the five largest producers of replacement automotive brake friction materials produced both new and rebonded automotive brake shoes. Each of the other four leading producers of replacement automotive brake friction materials sells primarily to rebonders, who purchase automotive brake lining to bond or rivet onto used automotive brake shoe cores. However, each of these leading producers of replacement automotive brake friction materials produced complete disc brake pads, many of which are reboxed by automotive brake shoe rebonders and sold under the trade names of such rebonders.

30. The structure of the domestic replacement automotive brake friction materials market has been altered by the advent of the disc brake. Although used for many years on certain imported cars, disc brakes did not account for a significant share of equipment on domestically produced cars prior to 1968. Since 1968, disc brakes have enjoyed an explosive increase in popularity. More than one-half of all 1971 model automobiles sold in the United States were equipped with front wheel disc brakes. Moreover, the automobile industry predicts that by 1975-1976, almost all automobiles sold in the United States will be equipped with disc brakes on all four wheels. Since each leading producer of replacement automotive brake friction materials produces complete disc brake pads, these producers now can sell their replacement automotive brake friction materials direct to wholesalers and retailers instead of the former pattern of selling to rebonders who in turn sell to wholesalers or retailers.

31. The pattern of the type of retail outlet selling replacement automotive brake shoes and disc brake pads has undergone a change in the last 15 years. Formerly automobile dealers and independent garages performed most brake repair work. However, there has been a significant trend for the shifting of brake repair work from automobile dealers and repair shops to service stations

and mass merchandisers, including specialized franchised repair shops.

32. By virtue of Midas' substantial present and future purchases of automotive brake shoes and disc brake pads, Midas could require its suppliers of these items to purchase some or all of their requirements of replacement automotive brake friction materials from ICI-Abex. By so doing, Midas could secure for ICI-Abex additional sales of replacement automotive brake friction materials to firms such as Wagner Electric Corporation and Genuine Parts Company, who each represent 10 percent or more of the domestic purchases of replacement automotive brake friction materials. The combined ICI-Abex and Midas organization would be the only existing producer of replacement automotive brake friction materials which owns or controls a substantial purchaser of automotive brake shoes and disc brake pads. Further, rebonders of brake shoes may purchase their requirements of replacement automotive brake friction materials from ICI-Abex in hopes of securing the reciprocal patronage of Midas for purchases of their automotive brake shoes and disc brake pads.

33. By virtue of Midas' substantial present and future purchases of recreational vehicle components containing automotive brake friction materials, Midas could require its suppliers of such components to purchase their entire requirements of automotive brake friction materials from ICI-Abex. By so doing, Midas could secure substantial additional sales of automotive brake friction materials for ICI-Abex and relieve ICI-Abex of the pressure of price competition on such sales. Further, suppliers of recreational vehicle components containing automotive brake friction material may purchase their requirements of such friction material from ICI-Abex in hopes of securing the reciprocal patronage of Midas for purchases of their recreational vehicle components.

34. By virtue of the proposed acquisition, the substantial present and future purchases by Midas of automotive brake shoes, disc brake pads and automotive friction materials could be foreclosed to any supplier except ICI-Abex itself or other suppliers selected by ICI-Abex by reason of such suppliers' reciprocal purchases from ICI-Abex.

35. By virtue of its substantial present and future purchases of automotive brake shoes and disc brake pads, its reputation as

a leading seller of under-car parts to wholesalers and retailers and its extensive automotive parts distribution facilities, Midas is one of the most likely entrants into the domestic manufacture of automotive brake friction materials for replacement use.

B. Flashers

36. The domestic market for flashers was \$7.6 million in 1970. Four manufacturers accounted for over 90 percent of domestic flasher production in that year.

VI. EFFECTS OF THE ACQUISITION

37. The effects of the acquisition of Midas by ICI may be substantially to lessen competition, or to tend to create a monopoly in the manufacture, distribution and sale of automotive brake friction materials and flashers throughout the United States in violation of Section 7 of the Clayton Act, in that:

(a) The sale by ICI-Abex of automotive brake friction materials for OEM use and replacement use may be increased by reciprocal purchases, and ICI-Abex's position in these oligopolistic markets strengthened;

(b) The sale by ICI-Abex of automotive brake friction materials for replacement use may be increased through, and competitive suppliers of such materials foreclosed from, the actual and potential purchases of Midas, and ICI-Abex's position in that oligopolistic market strengthened;

(c) The sale of flashers by the Signal-Stat Division of ICI-Abex may be increased through, and other suppliers foreclosed from, the potential purchases of Midas, and Signal-Stat's dominant position enhanced and entrenched;

(d) Midas may be eliminated as a likely potential competitor in the manufacture of automotive brake friction material for replacement use.

38. The acquisition of Midas by ICI constitutes an unfair method of competition in commerce and an unfair act and practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

VII. THE VIOLATION CHARGED

39. The acquisition of respondent, Midas, by respondent, ICI, constitutes violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Illinois Central Industries, 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 135 East Eleventh Place, in the city of Chicago, State of Illinois.
2. Respondent Midas-International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 222 South Riverside Plaza, in the city of Chicago, State of Illinois.
3. 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

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

"Automotive brake friction materials" are blocks, strips, rolled and disc brake materials and pads composed of non-sintered materials and used to retard or stop motion of passenger cars, trucks, trailers and any self-propelled land vehicle, excluding railway equipment.

"Flashers" are switches used in automobiles, trucks and buses to actuate turn signal or hazard warning indicators.

"Automotive brake parts" are components of brakes, and entire brake units, used to retard or stop motion of passenger cars, trucks, trailers and any self-propelled land vehicle, excluding railway equipment.

The term "domestic" shall refer to operations or sales made within the United States.

"Company" refers to any business entity.

"Eligible Firm" is any company other than a company engaged in the manufacture of passenger automobiles or the manufacture or distribution of automotive brake friction materials for passenger automobiles or automotive brake parts for passenger automobiles, or any subsidiary or affiliate of any such company, and which agrees not to transfer by sale, merger or other means the assets acquired pursuant to Paragraphs I and II of this order to other than an eligible firm without the consent of the Commission.

"Purchase" and "purchases" refer to any receipt of products, services, or raw materials from another company in exchange for money, products, services, or raw materials.

"Sell" and "sales" refer to any conveyance of products or raw materials to, or any performance of services for another company in exchange for money, products, services, or raw materials.

"Commission" means the Federal Trade Commission.

"Illinois Central Industries" includes Illinois Central Industries, Inc., and any domestic subsidiary or domestic affiliate thereof including Midas-International, and any of their successors and assigns.

"Midas" includes Midas-International Corporation and any do-

mestic subsidiary or domestic affiliate thereof, and any of their successors and assigns.

"Midas Muffler Shops" include all automotive service shops authorized by Midas to utilize the "Midas" trademark, whether franchised or owned by Midas.

I

It is ordered, That respondent Illinois Central Industries shall, immediately after service upon it of this order, take steps as are provided in this order to enable an eligible firm approved by the Commission (hereinafter referred to as the Firm), to enter into business capable of producing annually approximately one million five hundred thousand dollars (\$1,500,000) (as referenced to manufacturer's sale prices current at the date of service upon Illinois Central Industries of this order) of automotive brake friction materials, and bonding thereof (to the extent performed by Illinois Central Industries at any time during the year preceding the date of service upon it of this order), for passenger automobile disc brakes. The creation of a viable new entrant into the business of manufacturing of automotive brake friction materials for passenger automobile disc brakes, as required by this order, shall be accomplished as soon as possible and in any event no later than two (2) years after service upon Illinois Central Industries of this order.

II

It is further ordered, That the requirements of Paragraph I shall be accomplished in the following manner:

A. Respondent Illinois Central Industries shall, at its option, either (1) divest to the Firm or (2) provide financial and technical assistance to enable the Firm to purchase, lease or otherwise obtain such machinery, equipment and other property (other than real property) as may be necessary to initiate a viable business engaged in manufacturing automotive brake friction materials for passenger automobile disc brakes, and bonding thereof (to the extent performed by Illinois Central Industries at any time during the year preceding the date of service upon it of this order). In the event respondent Illinois Central Industries provides financial and technical assistance to the Firm to obtain some or all of such machinery, equipment and other property,

referred to in the preceding sentence, respondent Illinois Central Industries shall assist the Firm to identify and obtain such machinery, equipment and other property. *Provided, however,* That in no event shall the Firm be required to accept machinery, equipment or other property which it deems unsuitable.

B. For a period of eighteen (18) months after the date of the closing of the divestiture required by Subparagraph II.

A. respondent Illinois Central Industries shall make available to the Firm, on terms and conditions approved by the Commission, including a final maturity on repayment not exceeding ten (10) years, financial assistance as necessary, but not to exceed in the aggregate the sum of two million dollars (\$2,000,000), for the purpose of enabling the Firm to obtain such machinery, equipment and other property referred to in Subparagraph II.A. and to provide working capital for the Firm's passenger automobile disc brake manufacturing business. Such financial assistance shall be provided to the Firm on terms and conditions approved by the Commission, at an interest rate not to exceed eight and one-half (8 1/2 percent) per annum, simple interest, and shall be secured by first liens on the assets of the Firm.

C. In the event that respondent Illinois Central Industries divests the machinery, equipment or other property to the Firm as required by this paragraph, such machinery, equipment and other property shall be appraised by an independent appraiser, acceptable to the Commission, at its then-current fair market value, which appraised value shall be considered part of the financial assistance rendered to the Firm.

D. Respondent Illinois Central Industries shall:

1. Make available to the Firm, for the nontransferable use of the Firm alone, such technical information, formulae, trade secrets and know-how necessary to establish the Firm as a viable entity in the business of manufacturing and selling automotive brake friction materials for passenger automobile disc brakes, and bonding thereof (to the extent performed by Illinois Central Industries at any time during the year preceding the date of service upon it of this order), which meet nondiscriminatory, minimum quality standards for such products promulgated by Midas and which meet

any Federal regulations in effect at the time of divestiture as required by this paragraph. Nothing in this order, however shall require Illinois Central Industries to perform research or development for the Firm in addition to that which Illinois Central Industries is performing for itself. Such technical information, formulae, trade secrets and know-how shall be made available at no cost to the Firm (except as provided herein) for a period of twenty-four (24) months after the date of the closing of the divestiture required by Subparagraph II.A. *Provided, however,* That such period may be extended for an additional twelve (12) months in the event that the Firm can demonstrate to the Commission the necessity for such an extension. The Firm shall compensate Illinois Central Industries for the pro rata salary and reasonable expenses of its employees engaged in assisting the Firm pursuant to this subparagraph at any time subsequent to a six (6) month period after the Firm begins actual production of passenger automobile disc brake pads.

2. Grant to the Firm a nonexclusive, royalty-free right to use, without right to sublicense, all United States patents relating to the manufacture of automotive brake friction materials for passenger automobile disc brakes, and bonding thereof, vested in Illinois Central Industries, or to which Illinois Central Industries has a right to sublicense, as of the date of service upon it of this order or within two (2) years thereof. Said royalty-free licenses shall be for the life of each respective patent.

3. Assist the Firm to identify and obtain facilities, including realty, in which the Firm can conduct the business of manufacturing automotive brake friction materials.

4. Assist the Firm to identify and obtain well-qualified management personnel and other employees to staff adequately the Firm; *Provided, however,* That (a) Illinois Central Industries shall not hinder or obstruct the Firm's efforts to employ employees of Illinois Central Industries; but (b) nothing herein contained shall prevent Illinois Central Industries from

enforcing all lawful employment agreements, including all provisions concerning confidentiality and employer's shop rights.

E. Respondent Midas shall, at the option of the Firm, enter into a requirements contract with the Firm under which the Firm shall, to the extent it is able, supply Midas with up to seventy-five (75) percent of Midas' requirements of passenger automobile disc brake pads for resale. Said requirements contract shall be in effect for a period of five (5) years, commencing at the time the Firm begins actual production of passenger automobile disc brake pads which meet nondiscriminatory, minimum quality standards for such products promulgated by Midas and which meet any Federal regulations in effect at the time of divestiture as required by this paragraph and shall be at prevailing market prices for the products involved at the time in question.

F. In the event that the Firm commences the manufacture, rebonding or sale of automotive brake friction materials including brake shoes for passenger automobile drum brakes prior to or during the effective period of the requirements contract provided for in Subparagraph II.E., respondent Midas shall, at the option of the Firm, enter into a requirements contract with the Firm under which the Firm shall supply Midas with up to seventy-five (75) percent of Midas' requirements of automotive brake friction materials including brake shoes for passenger automobile drum brakes for resale. Said contract shall be in effect during the effective period of the requirements contract provided for in Subparagraph II.E., or remaining portion thereof. The obligation of Midas under the contract provided for in this subparagraph shall be conditioned upon the ability of the Firm to manufacture a product which meets nondiscriminatory, minimum quality standards for such products promulgated by Midas and which meets any Federal regulations in effect at the time of divestiture as required by this paragraph, and shall be at prevailing market prices for the products involved at the time in question. *Provided, however,* That these Subparagraphs II.E. and II.F. shall not affect purchases by Midas or a subsidiary or affiliate thereof, of brake and axle assemblies from another subsidiary or affiliate of Midas.

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III

It is further ordered, That respondent Illinois Central Industries shall, as soon as possible and in any event no later than two (2) years after service upon it of this order, divest itself absolutely and unconditionally, subject to the approval of the Commission, of all of the assets, properties, rights and privileges, tangible and intangible, owned by Illinois Central Industries as a result of its acquisition of the Signal-Stat Division of Lehigh Valley Industries, Inc., related to or involved in the production, distribution or sale of flashers including the following: all machinery and equipment used for or related to the manufacture and sale of flashers; all inventory in stock of flashers and of parts therefor; names of suppliers of parts, materials and equipment used in the manufacture of flashers; a list of all customers to which flashers have been sold since January 1, 1969; all plans, drawings, blueprints, tooling, patents, both domestic and foreign, which relate to the production, distribution and sale of flashers; and the exclusive, royalty-free right to use the trademark "Signal-Stat Brand" in connection with the manufacture and sale of flashers; but not to include real property, office equipment or motor vehicles.

IV

It is further ordered, That, pending divestiture required by Paragraph III, respondent Illinois Central Industries shall not take any action with respect to any of the assets, properties, rights and privileges of Signal-Stat required to be divested by Paragraph III which may impair their usefulness for the production, distribution or sale of flashers, or their market value.

V

It is further ordered, That the divestiture required by Paragraphs I and III shall not be effected, directly or indirectly, to any person who is an officer, director, employee or agent of, or otherwise under the control or influence of Illinois Central Industries, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Illinois Central Industries.

VI

It is further ordered, That respondent Midas, directly or indirectly or through any corporate or other device, shall within

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thirty (30) days after service upon it of this order, cease and desist from:

A. Selling or distributing, directly or indirectly, or attempting to sell or distribute, automotive brake shoes and disc brake pads containing automotive brake friction materials manufactured or distributed by Illinois Central Industries, to any company, except in emergency and distress situations approved by the Commission.

B. Purchasing or obtaining from Illinois Central Industries any products containing automotive brake friction materials, except in emergency and distress situations approved by the Commission. *Provided, however,* That nothing in this order shall prevent Midas or a subsidiary or affiliate thereof from purchasing brake and axle assemblies from another subsidiary or affiliate of Midas.

C. Selling or distributing, directly or indirectly, or attempting to sell or distribute to any company, flashers manufactured or distributed by Illinois Central Industries, except in emergency and distress situations, as approved by the Commission.

D. Purchasing flashers from Illinois Central Industries except in emergency and distress situations, as approved by the Commission.

VII

It is further ordered, That respondent Illinois Central Industries shall forthwith cease and desist from:

A. Purchasing, or entering into or adhering to any agreement or understanding to purchase, from an actual or potential supplier on the understanding that any of such purchases are conditioned upon or related to any sales by any company other than such actual or potential supplier;

B. Selling, or entering into or adhering to any agreement or understanding to sell, to an actual or potential customer on the understanding that any of such sales are conditioned upon or related to any purchases by any company other than such actual or potential customer;

C. Purchasing in order to promote or induce sales to any company;

D. Selling in order to promote or induce sales by any company;

E. Communicating to any company that (1) purchases by Illinois Central Industries on its bidder lists will or may be conditioned upon or related to sales by any company; or that (2) sales by Illinois Central Industries on its bidder lists will or may be conditioned upon or related to purchases by any company;

F. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between purchases and sales by any such company;

G. Causing or permitting the personnel of Illinois Central Industries, who are directly engaged in obtaining sales, or who by virtue of their responsibilities are able to influence directly obtaining sales, to (1) engage in purchasing; (2) obtain statistical data or other information which shows actual or potential purchases from any company; (3) attend any meeting, a purpose of which is the discussion of Illinois Central Industries' purchases or its purchasing strategy; or (4) specify or recommend that purchases could or should be made from any company;

H. Causing or permitting the personnel of Illinois Central Industries who are directly engaged in purchasing, or who by virtue of their responsibilities are able to influence directly any determination to purchase from a particular company, to (1) engage in obtaining sales; (2) obtain statistical data or information which shows actual or potential sales to any company; (3) attend any meeting, a purpose of which is the discussion of Illinois Central Industries' sales or its strategy for obtaining sales; or (4) specify or recommend that sales could or should be made to any company.

Provided, however, That nothing in this paragraph shall prevent personnel of Illinois Central Industries from having such influence on purchasing or obtaining sales as is necessary to comply with the other provisions of this order or prevent principal executive officers from performing their regular management functions.

VIII

It is further ordered, That respondent Illinois Central Industries

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shall, within thirty (30) days after service upon it of this order, destroy:

A. All statistical data in its possession, custody, or control which compares or otherwise relates purchases from any company to sales to such company;

B. All statistical data and other information which shows actual or potential purchases from any company and which is in the possession, custody or control of any personnel employed by Illinois Central Industries on the effective date of this order who, at any time within the two (2) years preceding the effective date of this order, were directly engaged in obtaining sales, or by virtue of their responsibilities were able to influence directly obtaining sales;

C. All statistical data and other information which shows actual or potential sales to another company, and which is in the possession, custody, or control of any personnel employed by Illinois Central Industries on the effective date of this order who, at any time within two (2) years before service upon Illinois Central Industries of this order, were directly engaged in purchasing, or by virtue of their responsibilities were able to influence directly any determination to purchase from a particular company.

Provided, however, That nothing in this subparagraph shall prevent personnel of Illinois Central Industries from compiling or maintaining such statistical data or other information as is necessary to comply with the other provisions of this order.

IX

It is further ordered, That respondent, Illinois Central Industries, shall, within thirty (30) days after service upon it of this order:

A. Issue a copy of Attachment A, hereof, to each of the personnel employed by Illinois Central Industries who, at any time within two (2) years after service upon Illinois Central Industries of this order, has directly engaged in purchasing, in obtaining sales, or in compiling or distributing statistical purchase or sales data, or by virtue of his responsibilities has been able to influence directly any of such functions.

B. Insert and maintain within any manuals and other such documents which set out the policies or procedures of

Illinois Central Industries for purchasing or for obtaining sales, or its policies relating to the compilation or distribution of statistical purchase or sales data (1) the language of Attachment A, hereof; and (2) a current list of the personnel of Illinois Central Industries, so distinguished, who are directly engaged in purchasing or in obtaining sales, or who by virtue of their responsibilities are able to influence directly either of such functions.

C. Mail a copy of Attachment B, hereof, together with a copy of this order, to each company from which Illinois Central Industries has, in either of the two (2) calendar years preceding the year of service upon Illinois Central Industries of this order, made purchases from or sales to in excess of \$50,000.

X

It is further ordered, That respondent Illinois Central Industries shall, within thirty (30) days of the third (3rd) anniversary after service upon it of this order:

A. Cause each of its then-current personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in obtaining sales on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly the obtaining of such sales, to complete and furnish to the legal department of Illinois Central Industries a sworn statement in the form of Attachment C, hereof;

B. Cause each of its then-current personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in purchasing on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly any determination to purchase from a particular Company, to complete and furnish to the legal department of Illinois Central Industries a sworn statement in the form of Attachment D, hereof;

C. Request each of its personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in obtaining sales on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly the ob-

taining of such sales, and who leaves the employ of Illinois Central Industries prior to the third (3rd) anniversary of the date of service upon Illinois Central Industries of this order, to complete and furnish to Illinois Central Industries' legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment C, hereof;

D. Request each of its personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in purchasing on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly any determination to purchase from a particular company, and who leaves the employ of Illinois Central Industries prior to the third (3rd) anniversary of the date of service upon Illinois Central Industries of this order, to complete and furnish to the legal department of Illinois Central Industries, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment D, hereof.

XI

It is further ordered, That respondent, Illinois Central Industries, shall within sixty (60) days of the third (3rd) anniversary of the date of service upon Illinois Central Industries of this order submit to the Commission copies of all sworn statements which it has received pursuant to Paragraph X.

XII

It is further ordered, That respondent Illinois Central Industries shall, for a period of ten (10) years from the date of service upon it of this order, cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, all or any part of the stock, share capital, assets or any interest in any company engaged in the domestic manufacture or domestic wholesale distribution of automotive brake shoes, automotive disc brake pads, automotive brake parts or flashers, (other than products, machinery, and equipment sold in the normal course of business and nonexclusive patent and know-how licenses) or from entering into any arrangements with any such concern by which Illinois Central Industries obtains the market share, in whole or in part, of such concern in such product lines. As used in the preceding sentence, the phrase

“assets or any interest” shall refer to assets or any interest relating to the product lines enumerated therein.

XIII

It is further ordered, That respondents Midas and Illinois Central Industries, shall, for a period of five (5) years from the date of service upon it of this order, cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, all or any part of the stock, share capital, assets or any interest in any domestic franchised Midas Muffler Shop, except for distress situations, in which event Midas shall not own or hold an interest in all or any part of the stock, share capital, assets or any interest in any franchised Midas Muffler Shop, or its successors or assigns, acquired after the date of service upon Midas of this order, for more than twelve (12) months. Nothing in this order shall prevent Midas from opening any new Midas Muffler Shops which are to be owned or operated by Midas. *Provided, however,* That these Paragraphs XII and XIII shall not apply to an interest arising out of the conversion of a debt interest acquired incident to a sale or other transaction and disposed of within twelve (12) months, or to any interests, rights or privileges arising out of a standard franchise agreement, or agreement to supply goods or services in the normal course of doing business, between Midas and actual or prospective Midas Muffler Shops.

XIV

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent Illinois Central Industries shall, upon written request, on reasonable notice and subject to any legally recognized privilege, grant permission to interview any personnel of Illinois Central Industries at a reasonably convenient time regarding any matter prohibited or required by this order.

XV

It is further ordered, That respondent Illinois Central Industries shall:

- A. Within thirty (30) days from the date of service upon it of this order and every thirty (30) days thereafter until it has fully complied with Paragraphs I through V of this order, submit a report in writing to the Commission

setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include, in addition to such other information and documentation as may hereafter be requested by the Commission, without limitation, (1) a specification of the steps taken by Illinois Central Industries to make public its desire to make the divestitures required by Paragraphs I and III of this order; (2) a list of all persons or organizations to whom notices of divestiture have been given; (3) a summary of all discussions and negotiations, together with the identity and addresses of all interested persons or organizations; and (4) copies of all reports, internal memoranda, offers, counter-offers, communications and correspondence concerning said divestiture.

B. Within sixty (60) days from the State of service upon it of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with Paragraphs VI through IX of the order, including, but not limited to the name and title of each individual to whom a copy of Attachment A, hereof, was issued pursuant to Paragraph IX.A. of this order, and the name of each company to which a copy of this order was mailed pursuant to Paragraph IX.C. of this order.

C. On the first (1st) anniversary of the date of service upon it of this order and on each anniversary date thereafter for a total of ten (10) years, submit a report in writing to the Commission listing all acquisitions, mergers and agreements to acquire or merge made by Illinois Central Industries; the date of each such acquisition, merger or agreement; the products involved; and such additional information as may from time to time be required by the Commission.

D. Notify the Commission at least thirty (30) days prior to any proposed changes which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, and that this order shall be binding on any such successor.

Attachment A

Re: Federal Trade Commission Order concerning the selling and purchasing activities of Illinois Central Industries and its subsidiaries.

Pursuant to an Order of the Federal Trade Commission, we issue the following policies and guidelines:

General

No employee shall:

1. discuss, compare, or exchange statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between our purchases and our sales.
2. prepare, maintain or in any manner obtain statistical data which compares or otherwise relates our purchases from a company to our sales to such company.

Purchasing

It is our policy to purchase solely on the basis of price, quality, and service. Purchasing personnel shall be prepared to justify all purchases in light of these criteria. No purchase may be conditioned upon or related to our sales or sales by any other company, nor shall any employee suggest or imply to any actual or potential supplier that any purchase is so conditioned or related.

No purchasing personnel shall:

1. engage in sales or marketing on our behalf;
2. in any manner obtain statistical data or other information which shows actual or potential sales to any company, or which specifies that purchases be made from a company because of the status of such company as an actual or potential customer;
3. attend any meeting, a purpose of which is the discussion of our sales or our strategy for obtaining sales;
4. specify or recommend to our sales or marketing personnel that sales could or should be made to any company.

Selling

No employee promoting sales to any actual or potential customer shall suggest or imply that such sales are conditioned upon or related to our purchases or purchases by any other company.

No sales or marketing personnel shall:

1. engage in purchasing on our behalf;
2. in any manner obtain statistical data or other information which shows actual or potential purchases from any company, or which specifies or recommends that sales be made to a company because of the status of such company as an actual or potential supplier;
3. attend any meeting, a purpose of which is the discussion of our purchases or our purchasing strategy;
4. specify or recommend to our purchasing personnel that purchases could or should be made from any company.

Violation of Policies or Guidelines

Violation of the above policies or guidelines shall subject any offending employee to dismissal from his employment.

Attachment B

To Our Customers and Suppliers:

Pursuant to the attached Order of the Federal Trade Commission, we

herewith advise you that it is the policy of Illinois Central Industries to purchase solely on the basis of price, quality, and service. We wish to assure you that our purchases will in no way be conditioned upon or related to our sales to you or any other company.

Chief Executive Officer

Attachment C

Name:

Dates of employment and positions held with Illinois Central Industries or its subsidiaries:

I have initialed all statements below which have been true at any time since (the date of this Order):

- _____ 1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 2. I have not prepared, maintained, or in some manner obtained statistical data which compared or otherwise related purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 3. I have not prepared, maintained, or in some manner obtained statistical data or other information which specified or recommended that sales could or should be made to a company because of its status as an actual or potential supplier of Illinois Central Industries or its subsidiaries.
- _____ 4. I have not suggested or implied to another company that purchases by Illinois Central Industries or its subsidiaries might be conditioned upon or related to sales to such company.
- _____ 5. I have not engaged in purchasing on behalf of Illinois Central Industries or its subsidiaries.
- _____ 6. I have not in some manner obtained statistical data or other information which showed actual or potential purchases from a company by Illinois Central Industries or its subsidiaries.
- _____ 7. I have not attended a meeting, a purpose of which was the discussion of the purchasing strategy of Illinois Central Industries or its subsidiaries.

(Signature)

City of _____

State of _____

Sworn to and subscribed
before me this _____ day of
_____, 1972.

(Notary Public)

Decision and Order

82 F.T.C.

Attachment D

Name: _____

Dates of employment and positions held with Illinois Central Industries or its subsidiaries: _____

I have initialed all statements below which have been true at any time since (the date of the Order): _____

- _____ 1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 2. I have not prepared, maintained, or in some manner obtained statistical data which compared or otherwise related purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 3. I have not prepared, maintained, or in some manner obtained statistical data or other information which specified or recommended that purchases could or should be made from a company because of its status as an actual or potential customer of Illinois Central Industries or its subsidiaries.
- _____ 4. I have not suggested or implied to another company that purchases by Illinois Central Industries or its subsidiaries might be conditioned upon or related to sales to such company.
- _____ 5. I have not engaged in sales or marketing on behalf of Illinois Central Industries or its subsidiaries.
- _____ 6. I have not in some manner obtained statistical data or other information which showed actual or potential sales to a company by Illinois Central Industries or its subsidiaries.
- _____ 7. I have not attended a meeting, a purpose of which was the discussion of the sales strategy of Illinois Central Industries or its subsidiaries.

(Signature)

City of _____

State of _____

Sworn to and subscribed
before me this _____ day of
_____, 1972._____
(Notary Public)