

Order

IN THE MATTER OF
THE BENDIX CORPORATION, ET AL.

Docket 8739. Interlocutory Order, March 29, 1973.

Order reversing action of the administrative law judge authorizing a subpoena to the Commission's Secretary, and quashing said subpoena.

ORDER REVERSING ACTION OF ADMINISTRATIVE LAW
JUDGE AUTHORIZING SUBPOENA TO COMMISSION SECRETARY

This matter is before the Commission pursuant to Section 3.23 (a) of the Commission's Rules of Practice to review the order of the administrative law judge dated February 15, 1973, which granted respondents' application for a subpoena directing Charles A. Tobin, Commission's Secretary, to produce a "staff memorandum * * * asking for permission to conduct or recommending the 'investigation into the Acts and Practices of Companies Manufacturing Automotive Parts, Accessories and Equipment.'"

In March 9, 1973, upon its own motion, the Commission placed this matter on its docket for review.

As a result of such review, the Commission has determined the document in question is an intra-agency memorandum reflecting the mental processes of the agency in considering the initiation of the investigation and, hence, not appropriate for discovery; therefore

It is ordered, That the administrative law judge's order of February 15, 1973, be, and hereby is, reversed and the subpoena issued pursuant thereto is hereby quashed.

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

Docket C-2371. Complaint, Mar. 29, 1973—Decision Mar. 29, 1973.

Consent order requiring a Dalton, 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 mate-

Complaint

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rial 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 Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc., and Peter Spirer, 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 Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Peter Spirer 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 carpet tiles, with their principal place of business located at Interstate 75 and Connector #3, Dalton, 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 carpet tiles, styles "Tritones" (and "Fancy That") (manufactured between April 16 and July 2, 1971); "Tempo;" "Aqua-

ius;" and "Melody" (the latter style in dye lot numbers 1003, 1004 and 1055), all 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 deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such 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 Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Peter Spierer is an officer of the corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondent corporation is engaged in the manufacture and sale of carpets and rugs. Its office and principal place of business is located at Interstate 75 and Connector #3, Dalton, 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 respondents Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc., its successors and assigns, and its officers, and respondent Peter Spierer, 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 the provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to the products designated in subparagraph one of Paragraph Two of the complaint giving rise to this order, and any other lots of Style Melody determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance, by the Commission of the final compliance report.

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 July 16, 1971, 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 carpet tile currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or carpet tile.

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.

Decision and 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 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

IN THE MATTER OF

BEN STROLL FURS, INC., ET AL.

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

Docket C-2371. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring a New York City manufacturer of fur products, among other things to cease misbranding, falsely invoicing and guaranteeing furs, and to make refunds to consumers who purchased misbranded or deceptively invoiced furs.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ben Stroll Furs, Inc., a corporation, and Ben Stroll, a/k/a Benjamin Strulowitz, 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 Fur Products Labeling 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 Ben Stroll Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Ben Stroll, a/k/a Benjamin Strulowitz is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 333 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and

have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said rules and regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as

herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

PAR. 9. Respondents are now and for some time last past have been engaged in the manufacture for sale, sale and distribution of fur products. The aforesaid products are shipped or delivered from respondents' place of business in the State of New York to respondents' customers located in various other States of the United States. Respondents maintain, and have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondents in the course and conduct of their business as aforesaid have sold and distributed in commerce fur products which were misbranded and falsely and deceptively invoiced as alleged in Paragraph Three through Seven hereinbefore. Respondents, through the aforesaid false and deceptive labels and invoices, obtained substantially higher prices for fur products than they would have obtained had the fur products been accurately labeled and invoiced in accordance with the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

The retention by respondents of the monies they received in the form of higher prices for the misbranded and deceptively invoiced fur products is a continuing deception and constitutes a deceptive act or practice and an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged were and are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce and an unfair method of competition within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; 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 has 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 Ben Stroll Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 333 Seventh Avenue, city of New York, State of New York.

The respondent Ben Stroll, a/k/a Benjamin Strulowitz is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Ben Stroll Furs, Inc., a corporation, its successors and assigns, and its officers, and Ben Stroll, a/k/a Benjamin Strulowitz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other devise, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur

product” are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely and deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term “invoice” is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

2. Representing directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Ben Stroll Furs, Inc., a corporation, its successors and assigns, and its officers and Ben Stroll, a/k/a Benjamin Strulowitz, individually and as an officer of said corporation, and respondents’ representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That respondents notify, by delivery of a copy of this order by registered mail, each of their customers listed in Schedule A, attached hereto, all of whom have purchased fur products which gave rise to this complaint, of the fact that such products were misbranded or falsely or deceptively invoiced.

It is further ordered, That respondents shall forthwith deposit in escrow with their attorney, as escrowee, Four Thousand Five Hundred and Eighty 00/100 (\$4,580.00) Dollars, which amount represents the difference between the sum actually received by the respondents in sales to their customers of 43 fur products identified by item number in Schedule A, attached hereto, which were misbranded or falsely or deceptively invoiced

as natural and the sum the respondents would have received for the same products had they been properly labeled and invoiced as dyed.

It is further ordered, That respondents make every prompt and diligent effort to ascertain the identity and the present address of, and the individual retail prices paid by each consumer who purchased the said 43 fur products manufactured by the respondents and identified by item number in Schedule A, attached hereto; and the respondents at the time and as part of the initial report of compliance which they shall file with the Commission within 60 days after service upon them of this order, as hereinafter set forth, shall include as part of that report a detailed account of the efforts made by them in obtaining the above information together with the results thereof.

It is further ordered, That following the respondents' initial report of compliance and its acceptance by the Commission, each consumer located by the respondents or by the Commission who has purchased any of the subject 43 fur products shall be sent by the respondents by registered mail a copy of this order and shall be paid a sum from the escrow amount arrived at as follows:

(1) Each of the consumers who have purchased any of the subject 43 fur products shall receive a percentage of the \$4,580.00 escrow. The percentage received by each shall be determined by ascertaining the total of the retail prices paid by the consumers for the 43 fur products and then determining the percentage that the individual consumer's retail price bears to the total of the retail prices.

(2) In the event that some of the consumers can not be located there shall be no reduction in the escrow amount of \$4,580.00, but rather the amount received by each consumer shall be calculated as described above except that the total of the retail prices used to ascertain the percentage of the escrow amount to be paid to the individual consumer shall be the total of the retail prices paid by the consumers who have been located for the respective fur products that they purchased.

(3) In no event shall any consumer receive more than 20 percent of the retail price originally paid by him, however, such payment shall not limit the consumer's rights or interests.

(4) Any amount remaining in the escrow account following full compliance by the respondents with this order

may be returned to them by the escrowee subject to the approval of the Commission.

It is further ordered, That in addition to the provisions hereinabove made regarding payment by the respondents to consumers who purchased the 43 misbranded or falsely and deceptively invoiced fur product, the respondents shall pay, to any other consumer who shows that prior to the effective date of this order he purchased a fur product manufactured and deceptively invoiced and/or misbranded by the proposed respondents, an amount equal to 20 percent of the wholesale price received by the respondents in the sale of the misbranded or falsely or deceptively invoiced fur product but in no event shall any payment made to a consumer under the provisions of this paragraph foreclose any of the consumer's rights or interests, nor shall any payment by the respondents provided for under this paragraph be made by them from the hereinabove described escrow fund of \$4,580.00.

It is further ordered, That in addition to the respondents sending a copy of this order to consumers who had purchased the 43 fur products as described hereinbefore, the respondents shall also send a copy of this order by registered mail to any other consumer known by them or who may become known by them to have purchased a fur product manufactured and misbranded or falsely or deceptively invoiced by the respondents prior to the effective date of this order.

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 effect 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 and address, the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

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

writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the respondents within sixty (60) days of their filing of the initial report of compliance and acceptance of the same by the Commission shall file with the Commission an additional report in writing setting forth in detail the manner and form in which they have complied with this order.

SCHEDULE A

<u>Stroll Inv. #</u>	<u>Date</u>	<u>Customer</u>	<u>Style/Item No.</u>
4191	7/11/68	Lockwood Furs	197/6331
"	"	" "	180/6327
4529	8/13/68	Lloyds	197/6682
"	"	"	101/4256
4607	8/20/68	I. E. Goodman	190/6708
"	"	" "	190/6340
4552	8/13/68	" "	199/6336
4476	8/5/68	Northern Furs	675/6649
"	"	" "	101/4273
5091	10/9/68	Evans Fur Co.	917F/6430
"	"	" " "	291F/6680
4793	9/6/68	" " "	199/6437
4711	8/29/68	" " "	968-8/6425
4694	8/28/68	" " "	917F/6428
"	"	" " "	981F/6429
"	"	" " "	953/6653
4360	7/25/68	" " "	585/6445
4264	7/17/68	" " "	875/6435

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<u>Stroll Inv. #</u>	<u>Date</u>	<u>Customer</u>	<u>Style/Item No.</u>
4257	"	" " "	875/6320
4244	7/16/68	" " "	875/6313
4414	7/31/68	Gold Label	195/6344
5149	10/14/68	H. D. Grossman	291F/6317
4627	8/21/68	Ben Herschaft	194/4259
"	"	" "	195/6668
4174	7/10/68	Robert Schechner	199/6348
9300	1/22/70	Giba-Friedman	635/5805
"	"	" "	915/5808
3357	12/30/70	Giba-Noblia, Inc.	817/1700
3494	1/15/71	A. I. Lipsey	9408/1703
3538	1/20/71	" "	9408/1701
6863	10/28/68	Lockwood Furs	197/6331
6857	10/18/68	" "	180/6327
9165	12/12/69	Mohl Fur Co.	875/5215
"	"	" " "	675/5222
"	"	" " "	675/5229
9010	12/1/69	" " "	824/4097
9056	12/3/69	Goldin-Feldman	525/5224
8974	11/25/69	Harfred	875/5228
9141	12/10/69	Evans Fur Co.	8225/4107
3494	1/15/71	A. I. Lipsey	9408/1703
3538	1/20/71	" "	9408/1701
9051	12/3/69	Pageant Furs	817/4288
8916	11/18/69	Goldin-Feldman	817/4279

IN THE MATTER OF
WESTERN STORECASTING, LIMITED, ET AL.

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

Docket C-2373. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring a Canadian corporation in Vancouver, British Columbia, operating in-store broadcasting promotional plans, among other things to cease knowingly inducing and receiving discriminatory promotional allowances from suppliers, and participating in advertising arrangements resulting in unlawful discrimination among American retailer.

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Section 45), by virtue of the authority vested in it by said Act, having reason to believe that the parties named in the caption hereof and hereinafter more particularly described and referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as hereinafter more particularly described, 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 respect thereto as follows:

PARAGRAPH 1. Respondent Western Storecasting, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the Province of British Columbia, Canada, with its principal office located at 515-850 West Hastings Street, Vancouver, British Columbia, Canada. Respondent Western Storecasting, Limited, is known as and referred to herein as "Western."

Respondent William R. Schieman is an individual and 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 1371 West 71st, Vancouver, British Columbia, Canada, and he is a citizen of the United States of America.

PAR. 2. Respondents, in connection with their business, have solicited, entered into and executed contracts and agreements with suppliers, located in the United States of America, which provide for Western to supply the following services and facilities

in connection with the sale and offering for sale of participating suppliers' products in certain IGA retail grocery stores located in western Washington, United States of America:

1. Arranging and providing for in-store sound broadcasts by prerecorded tapes of background music interspersed with commercial messages featuring the products of participating suppliers.

2. Advertising suppliers' products in the order and merchandising book of the participating retail grocery stores.

Said contracts and agreements provide that participating suppliers pay Western for the aforementioned services and facilities furnished by Western, through Western and to the participating IGA retail grocery stores.

PAR. 3. In the course and conduct of its aforementioned business during 1970 and 1971, Western solicited, entered into, and executed an agreement with the American Wholesale Grocery Company, a division of the Utah Wholesale Grocery Company, a Utah corporation, hereinafter referred to as "American."

Said agreement required Western to provide the following services and facilities in the IGA retail grocery stores who purchased from American and participated in the Western program:

1. Installation of tape decks and prerecorded tapes.

2. Arranging and providing for in-store sound broadcasts by prerecorded tapes of background music interspersed with commercial messages featuring the products of participating suppliers who sell through American.

In connection with this agreement, American furnished personnel and facilities to respondents for soliciting suppliers to enter the Western program in connection with the sale and offering for sale of the suppliers' products in western Washington, United States of America.

PAR. 4. In the course and conduct of their business, respondents executed contracts with certain IGA retail grocery stores. These contracts provided, in part, for said stores to purchase and promote all products and services advertised by all the suppliers participating in the in-store broadcasts.

PAR. 5. In the course and conduct of their business, respondents have engaged and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents send or cause to be sent, equipment, advertising materials, payments, communications, contracts, invoices and other items to and from their home offices in the Province of British Columbia, Canada, to and from the State of Washington in which the participating retail grocery stores are located.

In addition, many of the products sold and promoted in the retail grocery stores participating in the program have been transported from many States of the United States, in which said products were manufactured, prepared, or warehoused, to the State of Washington where said participating retail grocery stores are located.

PAR. 6. In the course and conduct of its business in commerce, and within the United States of America during 1970 and 1971, respondent Western has been the principal instrumentality and factor in negotiating and executing promotional and advertising arrangements between participating suppliers, American, and the participating retail grocery stores, wherein:

a. Participating suppliers have paid or contracted for the payment of something of value to respondent Western for the benefit of customers of such participating suppliers as compensation or in consideration for services and facilities furnished by or through said customers in connection with the sale or offering for sale of such participating suppliers' products, and wherein

b. Participating suppliers have contracted to furnish, contributed to the furnishing, and have furnished, through respondent Western, services and facilities connected with the sale or offering for sale of such participating suppliers' products to some of their retail grocery customers when respondents knew or should have known that the said payments for, or the said furnishing of, services and facilities were discriminatory in that neither respondents nor the participating suppliers offered and otherwise made available or accorded such payments for, or the furnishing of, services and facilities to all of said participating suppliers' customers, including those who do not purchase directly, competing with those so favored.

PAR. 7. By conceiving, authorizing and initiating the contracts with the participating retail grocery stores and with the participating suppliers, with the cooperation and assistance of American, as aforesaid, respondents controlled and determined the terms, conditions, rates, amounts, times, territories, and promotional arrangements between participating suppliers and their participating retail grocery customers.

Respondents knew or should have known that many of the participating suppliers did not offer or otherwise make available on proportionally equal terms the benefits of the payments, services and facilities of the Western program to all of their other retail customers, including those who did not purchase directly, competing with the favored participating retail grocery customers in the sale and distribution of such suppliers' products.

Respondents also failed to offer and otherwise make available on proportionally equal terms the Western program to all of the participating suppliers' other retail customers, including those who do not purchase directly, who, in fact, compete with the favored retail grocery customers.

As a result, respondents knew or should have known that the benefits of the payments, services and facilities of the Western program were not offered, accorded and otherwise made available to all of said participating suppliers' retail customers, including those who do not purchase directly, competing in the distribution of said participating suppliers' products.

PAR. 8. The acts and practices of respondents, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and 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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 5 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 Western Storecasting, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the Province of British Columbia, Canada, with its principal office located at 515-850 West Hastings Street, Vancouver, British Columbia, Canada.

Respondent William R. Schieman, is an individual and an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of corporate respondent. Respondent William R. Schieman is a citizen of the United States of America.

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

ORDER

It is ordered, That respondents Western Storecasting, Limited, a corporation, its successors and assigns, and its officers, and William R. Schieman, individually and as an officer, and respondents' agents, representatives and employees, in connection with their business in commerce, as "commerce" is defined in the Federal Trade Commission Act, when doing business within the United States of America, do forthwith cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of anything of value from any supplier for the benefit of such supplier's customer, for the purpose of compensating said supplier's customer for display and promotional services or facilities furnished by or through said supplier's customers, or for the purpose of furnishing display or promotional services and facilities, including background music and promotional announcements to said supplier's customers, in connection with the processing, handling, sale or offering for sale of such supplier's products by such customer, when respondents know or should know that such compensation, consideration, services, or facilities are not affirmatively offered, accorded, and otherwise made available by such supplier or respondents on proportionally equal terms to all the supplier's retail customers, including those who do not purchase directly from such supplier and who compete with the favored retail customers in the sale and distribution of such supplier's products.

2. Paying or contracting for the payment of anything

of value to or for the benefit of any retail customer of a supplier, or arranging for a supplier to pay anything of value to its retail customers, as compensation or in consideration for any services or facilities furnished by or through such retail customer, or furnishing, contracting to furnish, or contributing to the furnishing of any service or facility, including background music and promotional announcements, to any retail customer of such supplier, in connection with the processing, handling, sale or offering for sale of any of such supplier's products, unless such payment, compensation, consideration, services or facilities are affirmatively offered, accorded, and otherwise made available to all of such supplier's retail customers, including those who do not purchase directly from such supplier and who compete with the favored retail customers in the sale and distribution of such supplier's products.

3. Acting as an intermediary in transactions between suppliers and their retail customers as described in the complaint unless respondents affirmatively inform all such suppliers of such supplier's primary responsibility for seeing that the allowances they grant, or the services or facilities they furnish directly or indirectly in connection with the promotion of their products, to or for the benefit of some of their customers, are made available to all other customers, including those buying indirectly, who compete with the favored retail customers.

4. Requiring that a retail customer purchase or promote products of other participating suppliers, or all of the products of any one participating supplier, or all the products of all participating suppliers as a precondition for the direct or indirect receipt of promotional allowances and services from any participating supplier.

It is further ordered, That respondents shall not organize, sponsor, or initiate any in-store promotional program in the United States of America except under the following terms and conditions:

1. A copy of this order shall be delivered to each supplier who is invited to participate or who initiates any in-store promotional program before any contract or agreement, whether written or oral, is entered into.

2. A copy of this order shall be delivered to any person or organization other than a supplier or retail store who participates in, organizes or sponsors the respondents' program.

3. Respondents will not perform the obligations required of any supplier as expressed in the "Guides for Advertising Allowances and Other Merchandising Payments and Services," promulgated by the Federal Trade Commission on May 29, 1969, or as subsequently amended or revised, unless the supplier is furnished with written procedures detailing respondents' duties and methods in assisting the supplier to comply with said guides, and respondents obtain a written receipt from the supplier acknowledging receipt of said procedures.

It is further ordered, That the respondents herein shall sixty (60) days before engaging in any promotional program within the United States file with the Commission a report in writing setting forth in detail the manner and form in which they will comply with this order.

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

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 involves a corporation doing business in the United States of America, and which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF
TAYLOR MOBILE HOMES, INC., ET AL.

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

Docket C-2374. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring an Alcoa, Tenn., mobile home dealer to cease, among other things, misrepresenting selling prices, mark-ups, or wholesale costs; failing to disclose additional charges added to the advertised price; representing free service or products unless such are provided free of extra charges; and to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of credit, such information as required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and 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 Taylor Mobile Homes, Inc., Taylor Mobile Homes of Knoxville, Inc., Pioneer Mobile Homes, Inc., corporations, and Magic Castle Homes, Inc., a corporation doing business as Taylor Mobile Homes Jr. of Alcoa, Taylor Mobile Homes Jr. of Knoxville and Big Orange Trading Center, and L. Eugene Taylor and Larry J. Taylor, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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:

PAR. 1. Respondents Taylor Mobile Homes, Inc., Taylor Mobile Homes of Knoxville, Inc., Pioneer Mobile Homes, Inc., and Magic Castle Homes, Inc., doing business as Taylor Mobile Homes Jr. of Alcoa, Taylor Mobile Homes Jr. of Knoxville, and Big Orange Trading Center, are corporations organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with their principal place of business and office located at Route 3, Alcoa, Tennessee.

Respondents L. Eugene Taylor and Larry J. Taylor are the principal officers of the corporate respondents. Together they formulate, direct and control the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and delivery of new and used mobile homes to the public.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be transported from their place of business located as aforesaid in the State of Tennessee to purchasers thereof located in various other 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 business as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations with respect thereto in advertisements inserted in newspapers of general circulation, and through other advertising media, of which the following are typical and illustrative but not all inclusive:

All Homes Going at Just 3% over cost

Sample Selection
New 1971 60 x 12

Full Price \$3995
New 1971 12 x 48
Cost \$2993

New 24 x 40 3 bedroom Total Electric Fully Furnished
Cost \$5527

Taylor's 3% SALE All Homes Reduced 3% over our cost

Sample Cost

New 1971 60 x 12 2 bedroom \$3693

New 1971 60 x 12 3 bedroom \$3793

Nobody but Taylor can sell for just OVER 3% COST Brand New 1971 60 x 12

Free set-up, Free delivery, even free escort service.

This one low price includes everything FULL PRICE \$3995

Taylor has marked a selected group of homes to just 3% over their cost on the Taylor and Taylor Jr. Lots * * * Just 3% over cost - That's All! Plus you'll get free service and delivery.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set forth herein, respondents have represented directly and by implication that:

1. Respondents' selling prices for mobile homes represent a 3 percent markup over wholesale cost.
2. Amounts shown in advertisements for certain mobile homes represent respondents' wholesale cost.
3. Amounts advertised for certain mobile homes represent the total purchase price or cost to customers.
4. Mobiles homes purchased from respondents are serviced free of charge.

PAR. 6. In truth and in fact:

1. Respondents' mobile homes are not customarily sold at prices representing a 3 percent markup over wholesale cost. In fact respondents' markup over wholesale cost is substantially more than 3 percent.
2. Amounts advertised as wholesale cost for certain mobile homes substantially exceed respondents' actual wholesale cost.
3. Amounts advertised as the total purchase price or cost for mobile homes are substantially less than the actual total purchase price or cost to customers. In most instances customers are required to pay additional amounts for taxes, official fees and service.
4. Mobile homes purchased from respondents are not serviced free of charge. In fact an additional amount is added to the selling price of most mobile homes to cover the cost of servicing such units.

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

PAR. 7. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' conditional sales contracts, promissory notes or other instruments of indebtedness to various financial institutions. As a general rule these financial institutions or other purchasers take such instruments free from any claims or defenses which the obligor may have against respondents for respondents' failure to perform or for certain other unfair, false, misleading or deceptive acts and practices. In any subsequent legal action by the financial institution or other purchaser to collect on such

instruments, these claims or defenses of the obligor may be cut off.

Therefore the acts and practices as set forth herein were, and are, unfair, false, misleading and deceptive.

PAR. 8. 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 corporation, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 9. 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 and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as alleged herein, 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.

COUNT II

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

PAR. 11. In the ordinary course of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, 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.

PAR. 12. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents do not provide these customers with any other consumer credit cost disclosures prior to the consummation of

the "credit sale" as required by Section 226.8(a) of Regulation Z.

By and through the use of the contract, respondents:

1. Fail to use the term "total downpayment" to describe the sum of the "cash downpayment" and the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

2. Fail to include the amount of premiums for credit life insurance in the finance charge, as required by Section 226.8(c)(8)(i) of Regulation Z, since respondents fail to disclose that credit life insurance is not required and fail to obtain separately signed and specifically dated affirmative requests for the credit life insurance, in accordance with Section 226.4(a)(5) of Regulation Z.

3. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

4. Fail to disclose the amount, or method of computing the amount, of any default, delinquency, or similar charges payable in event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

5. Fail to identify the method of computing any unearned finance charge in event of prepayment of the obligations and a statement of the amount or method of computation of any charges that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

6. Fail to make all the disclosures specified in Section 226.8 of Regulation Z on a single side of a document or statement identifying the transaction, as required by Section 226.8(a) of Regulation Z.

PAR. 13. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents:

State the amount of the downpayment required and the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed

under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (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 payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate; and
- (v) The deferred payment price.

PAR. 14. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated 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 Truth in Lending Act and the implementing regulation promulgated thereunder; 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. Respondents Taylor Mobile Homes, Inc., Taylor Mobile Homes of Knoxville, Inc., Pioneer Mobile Homes, Inc., and Magic Castle Homes, Inc., doing business as Taylor Mobile Homes Jr. of Alcoa, Taylor Mobile Homes Jr. of Knoxville and Big Orange Trading Center, are corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with their principal place of business and office located at Route 3, Alcoa, Tennessee.

Respondents L. Eugene Taylor and Larry J. Taylor are the principal officers of said corporations. Together they formulate, direct and control the policies, acts and practices of said corporations and their address is the same as that of said corporations.

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

ORDER

I.

It is ordered, That respondents Taylor Mobile Homes, Inc., Taylor Mobile Homes of Knoxville, Inc., Pioneer Mobile Homes, Inc., corporations, and Magic Castle Homes, Inc., a corporation doing business as Taylor Mobile Homes Jr. of Alcoa, Taylor Mobile Homes Jr. of Knoxville, and Big Orange Trading Center, and their successors and assigns, and their officers, and L. Eugene Taylor and Larry J. Taylor, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and delivery of mobile homes or any other products or 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 product or service may be purchased for any dollar amount or percentage over wholesale cost unless substantial sales are made at the stated markup over respondents' actual wholesale cost, or misrepresenting in any manner respondents' selling prices or markups.

2. Representing, directly or by implication, that any price or amount for any product or service is respondents' wholesale cost unless such price or amount accurately represents respondents' actual wholesale cost, or misrepresenting in any manner respondents' wholesale costs.

3. Failing to disclose any additional amounts, fees or

charges that will be added to the price or amount advertised as the total cost of any product or service.

4. Representing, directly or by implication, that respondents provide free service or products unless such services or products are provided free of extra charges.

It is further ordered, That for a period of five (5) years respondents maintain records which disclose the factual basis for any representation of respondents' cost or special prices for any products or services or any representation of free goods or services.

II.

It is further ordered, That respondents Taylor Mobile Homes, Inc., Taylor Mobile Homes of Knoxville, Inc., Pioneer Mobile Homes, Inc., corporations, and Magic Castle Homes, Inc., a corporation doing business as Taylor Mobile Homes Jr. of Alcoa, Taylor Mobile Homes Jr. of Knoxville and Big Orange Trading Center, their successors and assigns, and their officers, and L. Eugene Taylor and Larry J. Taylor, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 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. Failing to use the term "total downpayment" to describe the sum of the "cash downpayment" and the "trade-in," made in connection with any credit sale, as required by Section 226.8(c)(2) of Regulation Z.

2. Failing in any credit sale to include the amount of premiums for credit life insurance in the finance charge, as required by Section 226.8(c)(8)(i) of Regulation Z, unless respondents disclose that credit life insurance is not required and obtain a separately signed and specifically dated signature requesting the insurance in accordance with Section 226.4(a)(5) of Regulation Z.

3. Failing in any credit sale to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

4. Failing in any credit sale to disclose the amount, or method of computing the amount, of any default, delinquency, or similar charges payable in event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

5. Failing in any credit sale to identify the method of comput-

ing any unearned portion of the finance charge in the event of prepayment of the obligation, or failing to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such finance charge that will be credited to the obligation or refunded to the customer, whether by failing to state that such charge will be deducted before or after computation of the unearned portion or otherwise, as required by Section 226.8(b)(7) of Regulation Z.

6. Failing in any credit sale to make all the disclosures specified in Section 226.8 of Regulation Z on a single side of a document or statement identifying the transaction, as required by Section 226.8(a) of Regulation Z.

7. Failing in any credit sale to make all disclosures required by Section 226.8 of Regulation Z, in the manner and form prescribed therein.

8. Stating in any advertisement the amount of the downpayment required or the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(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 payments scheduled to repay the indebtedness if the credit is extended;

(iv) The amount of the finance charge expressed as an annual percentage rate; and

(v) The deferred payment price.

9. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8, 226.9 and 226.10 of Regulation Z.

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

It is further ordered, That respondents notify the Commission

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

HOLDERBANK FINANCIERE GLARIS S.A., ET AL.

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

Docket C-2375. Complaint, April 4, 1973—Decision, April 4, 1973.

Consent order requiring a holding company with its principal office in Holderbank, Canton of Aargau, Switzerland, and its subsidiary head-quartered in Montreal, Canada, among other things to divest itself of an acquired portland cement producer; approving a proposal to sell the acquired company to an individual "as one acceptable but not exclusive method" of compliance with the divestiture provision; and dismissing the complaint as to one of the respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of the Clayton Act, as amended (U.S.C. Title 15, Section 18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. Section 45), and that a proceeding with respect thereto would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended (U.S.C. Title 15, Section 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45) stating its charges as follows:

I. DEFINITIONS

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

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

(b) "Detroit area" consists of the counties of Macomb, Oakland and Wayne, Michigan.

II. HOLDERBANK FINANCIERE GLARIS S.A.

2. Holderbank Financiere Glaris S.A. (hereafter "Holderbank"), was incorporated in the Canton of Glaris, Switzerland on August 4, 1930. It is a holding company organized and existing under the laws of Switzerland and has its principal office located in the town of Holderbank, Canton of Aargau, Switzerland.

3. Holderbank is principally engaged in the manufacture, sale and distribution of cement throughout the free world, with manufacturing plants located in Switzerland, Germany, Austria, France, Belgium, Netherlands, Lebanon, South Africa, Mexico, Costa Rica, Columbia, Brazil, Peru, Australia, Canada and the United States.

4. The Holderbank group has a total worldwide annual cement production capacity in excess of 90 million barrels, is a major supplier of portland cement in Holland, Italy and Lebanon, is a leading marketer of portland cement in France, Greece, the Belgian Congo, Brazil, Sudan, South Africa, Mexico, Costa Rica, Canada and the United States, and accounts for approximately 50 percent of the cement production in Switzerland and Belgium. The Holderbank group had net sales of S Fr. 1,202,603,000, net earnings of S Fr. 97,434,000 and total assets of S Fr. 2,680,696,000 in 1970.

5. Holderbank maintains a technical center in Switzerland where scientists, chemists and engineers conduct research on the technological aspects of cement and concrete. Information supplied by all cement producing plants is collected and made available to all members of the Holderbank group and in turn, such research information is disseminated to the operating companies to further increase the quality of cement and efficiency of operation.

6. The first entry of Holderbank into North America was made in 1953 when a portland cement plant was built at Villeneuve, Canada, near Quebec City. A subsequent plant was built in 1956 at Clarkson, near Toronto, on the shores of Lake Ontario. These plants operate under the name St. Lawrence Cement Co.

7. Holderbank, through stock ownership and through interlocking directors, maintains working control of both St. Lawrence Cement Co. and Dundee Cement Company, which companies are further described hereinafter.

8. At all times relevant herein, Holderbank, through its subsidiaries St. Lawrence Cement Co. and Dundee Cement Company, was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

III. ST. LAWRENCE CEMENT CO.

9. St. Lawrence Cement Co. (hereafter "St. Lawrence"), is a corporation organized and existing under the laws of the province of Quebec, Canada, with its principal office located at 50 Place Cremazie West, Suite 1024, Montreal 351 P.Q., Canada. Holderbank is by far the largest stockholder in St. Lawrence and maintains working control of the company through its ownership of 49.745 percent of the voting stock, through common directors, and by the transfer of executive personnel between the two companies.

10. St. Lawrence is principally engaged in the manufacture, sale and distribution of portland cement. From its 3,000,000 barrel capacity plant at Villeneuve, Quebec and its 6,000,000 barrel plant at Mississauga, Ontario, Canada (Clarkson), it distributes portland cement in the Canadian provinces of Nova Scotia, New Brunswick, Prince Edward Island, Quebec and Ontario, and in the United States in the States of New York, Michigan, Maine, Vermont and Massachusetts. St. Lawrence is also engaged in the production, sale and distribution in Canada of building materials, including ready mixed concrete, asphalt, crushed stone, sand, concrete block and prestressed concrete, as well as the construction of roads and industrial paving.

11. In 1970 St. Lawrence had net sales of \$49,384,709 (Canadian), net earnings of \$1,870,622 (Canadian), and assets as of December 31, 1970 of \$81,447,495 (Canadian).

12. At all times relevant herein, St. Lawrence was engaged in selling and shipping portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV. DUNDEE CEMENT COMPANY

13. Dundee Cement Company (hereafter "Dundee") is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Dundee, Michigan.

14. Dundee is principally engaged in the manufacture, sale and distribution of portland cement from plants located at Dundee, Michigan and Clarksville, Missouri under the brand name "Dundee." The capacities of these plants to produce portland cement are 4,500,000 and 6,800,000 barrels, respectively.

15. Dundee's Clarksville plant has access to water and rail transportation, and its Dundee plant has access to rail transportation. From these plants, Dundee, primarily by means of an extensive fleet of large (7,500 barrel capacity) water borne hopper barges, ships portland cement to fifteen (15) distribution terminals located throughout the central United States. Dundee portland cement is distributed from the Alleghenies to the Rockies and from the Great Lakes to the Gulf of Mexico.

16. For the fiscal year ended March 31, 1971 Dundee had net sales of approximately \$30,000,000, and assets of over \$80,000,000.

17. Dundee is a subsidiary of, and controlled by, Holderbank, which holds 54.18 percent of its voting stock. As with St. Lawrence, common directors are on the boards of directors of Holderbank and Dundee and key executive personnel are transferred between the companies. Dundee's present chairman was also the first chairman of St. Lawrence. The plans for the construction of the first Dundee cement plant at Dundee, Michigan, were made following the building of the second St. Lawrence cement plant in 1956. The equity capital for the venture was supplied by Holderbank and its principals.

18. The Detroit area is one of the principal markets for portland cement manufactured at Dundee's Michigan plant. In 1970 the Michigan plant produced approximately 5,000,000 barrels of portland cement, of which nearly 700,000 barrels were shipped to customers in the Detroit area, making Dundee the fourth leading portland cement supplier to the Detroit area during 1970.

19. At all times relevant herein, Dundee was engaged in selling and shipping portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

V. BASF WYANDOTTE CORPORATION

20. BASF Wyandotte Corporation (hereafter "Wyandotte") is the wholly-owned subsidiary of one of the world's largest chemical companies, the West German firm, Badische Anilin - & Soda-Fabrik A. G. (hereafter "BASF"). BASF acquired control of the Wyandotte Chemicals Corporation in the fall of 1969, but the

firm continued to operate under the name Wyandotte until December 31, 1970, when the name was officially changed to BASF Wyandotte.

21. Wyandotte was primarily a producer of chemicals and operated several divisions which produced inorganic chemicals, organic chemicals, urethane chemicals, cleaning and sanitizing chemicals for commercial, industrial and institutional uses, products for the dry cleaning industry, protective coatings for electric public utilities, as well as portland cement. Wyandotte also had affiliated companies in Europe and Latin America which sold and distributed chemical products in those areas.

22. In 1969, Wyandotte had net sales of \$153,129,570 and net earnings of \$510,147, and its total assets as of December 31, 1969, were \$155,474,961.

23. Wyandotte's Cement Division was principally engaged in the manufacture, sale and distribution of portland cement. The company first entered the portland cement business in 1899.

24. In March 1970, Wyandotte's Cement Division discontinued to operate the kilns of its 1,500,000 barrel capacity plant at Wyandotte, Michigan, but continued to produce portland cement by purchasing raw clinker from St. Lawrence's Mississauga, Ontario plant. The division continued to sell and distribute portland cement under the Wyandotte brand name in the States of Michigan, Ohio and Indiana.

25. In 1970, Wyandotte's Cement Division purchased 240,000 tons of clinker from St. Lawrence (1 ton clinker = 5.3 barrels of cement) and produced 1,104,000 barrels of portland cement valued at \$3,488,640.

26. The Detroit area is the principal market for the portland cement processed at the Wyandotte plant. In 1970, Wyandotte shipped 881,660 barrels of portland cement to customers in the Detroit area. In 1970 Wyandotte was the third leading portland cement supplier to the Detroit area.

27. At all times relevant herein, BASF Wyandotte was engaged in selling and shipping portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

VI. THE ACQUISITION

28. On November 24, 1970, St. Lawrence organized Wyandotte Cement Incorporated (hereafter "Cement") under the laws of

the State of Michigan. On January 16, 1971, St. Lawrence entered into an agreement with Wyandotte whereby St. Lawrence acquired all the portland cement producing facilities of Wyandotte, including kilns, together with a 99 year lease on the property on which the facilities were located. The total consideration paid for these facilities was \$1,400,000. All facilities and the lease were assigned to Cement.

VII. NATURE OF TRADE AND COMMERCE

29. The portland cement industry in the United States is substantial. In 1970 there were about 50 portland cement companies in the United States operating approximately 182 plants. Total shipments of portland cement in 1970 amounted to approximately 390 million barrels valued at about \$1,298,235,000.

30. The cement industry in the United States is concentrated. In 1967 the top four firms held 28 percent of the market and the top eight firms 48 percent of the market.

31. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, concrete products manufacturers, contractors and building materials dealers. On a national basis about 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete.

32. Historically there have been a number of mergers and acquisitions in the portland cement industry. Each horizontal merger in the portland cement industry results in a lessening of competition in the industry as a whole, particularly if there was actual competition between the two merging firms in the same geographic market. Each such merger additionally reduces the number of suppliers available to customers for portland cement.

33. There are no cement companies serving the entire United States, but the larger companies, through a network of geographically scattered plants, cover major portions of the country. The effective marketing area of a cement plant is geographically limited by high shipping costs in relation to product value. Markets for portland cement are therefore primarily local or regional rather than national in scope, and production plants are widely scattered to serve the available markets.

34. Prior to the acquisition, Dundee and Wyandotte competed with each other and six other firms in the sale of portland cement in the Detroit metropolitan area and the States of Michigan, Ohio and Indiana. The Detroit area is a relevant geographic market area in which to assess the competitive consequences of this acquisition. The top four firms in 1970, which included

Wyandotte and Dundee, accounted for over 73 percent of the Detroit area market.

35. All of these firms, except Wyandotte, were multiplant producers of portland cement. Wyandotte was the last independent, single-plant cement producer in the relevant geographic area.

36. Of the total unit sales of portland cement in the Detroit market area in 1970, Holderbank, through its Dundee subsidiary, with approximately 10 percent of the market, accounted for the fourth largest share; Wyandotte, with approximately 14 percent of the market, accounted for the third largest share. Now, as a result of the instant acquisition by St. Lawrence, Holderbank, through its subsidiaries, accounts for approximately 24 percent of the relevant market, making it the second largest supplier of portland cement to the Detroit market.

VIII. EFFECTS OF THE ACQUISITION

37. The effect of Holderbank's acquisition, through its St. Lawrence and Cement subsidiaries, of the cement producing assets of Wyandotte, as above alleged, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement in the relevant Detroit geographic area in the following ways, among others:

(a) Wyandotte, with the third largest market share, and the last remaining independent firm, has been eliminated as a separate, independent competitor;

(b) Holderbank has substantially enhanced its competitive position by acquiring the Wyandotte trade name and its sales organization;

(c) Concentration has been substantially increased and Holderbank's share of the relevant market has more than doubled;

(d) Actual and potential competition between Holderbank's Dundee subsidiary and Wyandotte and between Wyandotte and other cement producers has been eliminated;

(e) Purchasers of portland cement for use in the production of ready-mixed concrete and in other products and materials have been deprived of a substantial and independent source of supply; and

(f) Entry of new competitors may be inhibited or prevented.

IX. VIOLATION CHARGED

38. The acquisition of Wyandotte's Cement Division by Holderbank, through its St. Lawrence and Cement subsidiaries, constitutes a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18) as amended, and Section 5 of the Federal Trade Commission Act (U.S.C. Title 15 Section 45).

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, 15 U.S.C. 18, 45, 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 thereafter given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Holderbank Financiere Glaris S.A. is a holding company organized and existing under the laws of Switzerland and has its principal office located in the town of Holderbank, Canton of Aargau, Switzerland.

2. Respondent, St. Lawrence Cement Co. is a corporation organized and existing under the laws of the province of Quebec, Canada, with its principal office located at 50 Place Cremazie West, Suite 1024, Montreal 351 P.Q., Canada.

3. Respondent, Dundee Cement Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Dundee, Michigan.

4. Respondent, Wyandotte Cement Incorporated is a corporation organized and existing under the laws of the State of

Michigan, with its principal place of business located at 3505 Biddle Avenue, Wyandotte, Michigan.

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

ORDER

I.

It is ordered, That respondents, Holderbank Financiere Glaris S.A., (“Holderbank”), St. Lawrence Cement Co. (“St. Lawrence”) and Wyandotte Cement Incorporated (“Wyandotte”), corporations, their successors and assigns, and their officers, directors, agents, representatives and employees, shall, on or before December 31, 1973, divest themselves absolutely, in good faith, and as a unit, of all right, title and interest in all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all properties, plants, machinery, equipment, raw material reserves, trade names, contract rights, trademarks, and good will, acquired by respondent as a result of their acquisition of the assets of the Cement Division of BASF Wyandotte Corporation and now operated as Wyandotte Cement Incorporated, together with all plants, machinery, buildings, storage terminals, land, raw material reserves, improvements, equipment and other property of whatever description that have been added to the former Cement Division of BASF Wyandotte as may be necessary to restore the former Cement Division of BASF Wyandotte, as a going concern and an effective competitor in the manufacture and sale of portland cement.

II.

It is further ordered, That divestiture in accordance with the “Agreement” annexed hereto dated November 1, 1972, by and between St. Lawrence, Wyandotte and Edward H. Bovich together with Exhibit A (“Promissory Note”) and Exhibit B (“Agreement For Purchase of Clinker”) be and hereby is approved as one acceptable but not exclusive method of compliance with Paragraph I requiring divestiture by Holderbank, St. Lawrence and Wyandotte.

III.

It is further ordered, That the “Agreement” and Exhibits A and B annexed thereto shall not be altered in any material respect without the prior approval of the Federal Trade Commission and that St. Lawrence and Wyandotte shall submit a detailed written report to the Commission within ten (10) days

of, (1) actual divestiture under the terms of the "Agreement" or, (2) any actual or indicated failure on the part of Edward H. Bovich, St. Lawrence and Wyandotte to consummate the "Agreement" in accordance with its terms.

IV.

It is further ordered, That if default by Edward H. Bovich occurs under Exhibit A ("Promissory Note") to the "Agreement" annexed hereto, or for any other reason respondents regain direct or indirect ownership or control of any of the divested assets as set forth in Paragraph I, said ownership or control shall be redvested, subject to approval of the Federal Trade Commission, within six (6) months from the date of reacquisition.

V.

It is further ordered, That in the event divestiture is not accomplished in accordance with the "Agreement" and Exhibits A and B annexed hereto that respondents within thirty (30) days from the date of notice required by Paragraph III of this order and every sixty (60) days thereafter until they have fully complied with the divestiture provision of this order, shall submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply with this order. All compliance reports shall include, among other things which may from time to time be required, a summary of all contacts and negotiations with all persons who are contacted by or who express to respondent a possible interest in acquiring ownership or control over the assets, properties, rights or privileges to be divested under this order, the identity of all such persons, copies of any proposed or executed sales contracts, copies of any internal corporate documents discussing such divestiture, and copies of all written communications from and to such potential purchasers.

VI.

It is further ordered, That pending divestiture neither Holderbank, St. Lawrence nor Wyandotte shall make any changes in any of the plants, machinery, storage terminals, buildings, equipment or other property of whatever description of the former Cement Division of BASF which shall impair its present rated capacity for the production, sale and distribution of portland cement, or the market value of such facilities, unless such capacity or value is restored prior to divestiture.

VII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a corporate successor, and that this order shall be binding on any such successor

VIII.

It is further ordered, That the complaint is dismissed as to respondent Dundee Cement Company.

AGREEMENT

AGREEMENT dated as of November 1, 1972 among ST. LAWRENCE CEMENT CO., a Quebec corporation ("St. Lawrence"), WYANDOTTE CEMENT INCORPORATED, a Michigan corporation ("Wyandotte"), and EDWARD H. BOVICH ("Bovich").

WITNESSETH:

WHEREAS on January 16, 1971 St. Lawrence acquired from BASF Wyandotte Corporation ("BASF") the plant and equipment of the Cement Division of BASF employed in the manufacturing, distributing and selling of Portland cement, all as described in an Agreement dated January 16, 1971 among BASF, St. Lawrence and Wyandotte which was organized by St. Lawrence and is wholly owned by it, a true copy of such Agreement and the several exhibits thereto ("BASF Agreement") having been delivered to Bovich; and

WHEREAS in accordance with the provisions of the BASF Agreement St. Lawrence contemporaneously obtained a lease of the real estate on which the plant and equipment were located at a nominal rental and subject to termination by BASF in the event that the acquired properties were no longer employed in the operation of a Portland cement plant; and

WHEREAS under date of May 10, 1972 the Federal Trade Commission ("FTC") notified St. Lawrence of its determination to institute a formal proceeding looking to the divestiture by St. Lawrence of the above described business, assets and leasehold (herein, together with all subsequent additions and improvements, being called "the Wyandotte Assets"); and

WHEREAS the Wayne County Department of Health notified St. Lawrence and Wyandotte that the continued operation of the clinker grinding facilities would not be permitted after December 31, 1972 unless adequate measures were taken to eliminate air pollution alleged to constitute violations of the Environmental Protection Act of 1970 of the State of Michigan and, in response to such notification, Wyandotte initiated and is in the process of completing the installation of anti-pollution equipment at a cost estimated to be in excess of \$700,000; and

WHEREAS by reason of the threatened FTC proceeding St. Lawrence is prepared to effect a divestiture of the Wyandotte Assets to Bovich on the terms and conditions set forth in this Agreement; and

WHEREAS Bovich desires to acquire as at December 31, 1973 the Wyandotte Assets on the terms and conditions of this Agreement provided that the air pollution complaints of the Wayne County Department of Health and any other similar public or private complaint shall have been satisfactorily met prior to such date;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. St. Lawrence will sell, assign and transfer as of the close of business on December 31, 1973 ("the Closing Date") to a new corporation ("Purchaser") to be organized by Bovich the plant and equipment included in the Wyandotte Assets by an instrument in substantially the form annexed as Exhibit B to the BASF Agreement, the leasehold and the exclusive right to the use of the name "Wyandotte Cement Incorporated" in consideration of (i) the issuance and delivery by Purchaser to St. Lawrence of a promissory note in the form annexed hereto as Exhibit A, (ii) the execution and delivery by Purchaser of a recordable mortgage to secure such note covering all buildings and fixtures included in the Wyandotte Assets and all subsequent additions thereto and improvements thereof and (iii) the execution and delivery by Purchaser of an appropriate security agreement and related Financing Statement.

2. St. Lawrence and Wyandotte will sell, assign and transfer to Purchaser all inventories of raw materials, finished goods, spare parts and miscellaneous supplies in the possession of Wyandotte on the Closing Date by an instrument in substantially the form annexed as Exhibit C to the BASF Agreement in consideration of an undertaking on the part of Purchaser to pay to St. Lawrence (i) on May 1, 1974 for the clinker inventory as at December 31, 1973 an amount equal to of the net selling price of Portland cement realized by Wyandotte in the calendar year 1973,* (ii) on March 1, 1974 for the Portland cement inventory as at December 31, 1973 an amount equal to the inventory price for clinker asset forth above plus the actual average cost of converting clinker into Portland cement incurred by Wyandotte in 1973 in accordance with present accounting practices of Wyandotte which include all costs of grinding and of materials added in the grinding process and (iii) on March 31, 1974 for the spare parts and miscellaneous supplies an amount equal to the total amount, if any, by which their aggregate book value as at December 31, 1973 exceeds \$50,000.

3. St. Lawrence and Wyandotte shall retain all accounts receivable, accounts payable, insurance policies, debts, liabilities or obligations of Wyandotte generated pursuant to its business, all of such being for the account of Wyandotte as of the Closing Date. All accounts receivable and accounts payable generated by Purchaser in operating the Wyandotte Assets or carrying on the business on and after the Closing Date shall be for the account of Purchaser. Accounts payable arising pursuant to open purchase orders issued by St. Lawrence or Wyandotte prior to the Closing Date but where delivery occurs on or after the Closing Date shall be for the account of Purchaser. Purchaser shall use its best efforts to collect the accounts receivable retained by Wyandotte on the Closing Date and shall promptly remit to St. Lawrence, P.O. Box 520, Mississauga, Ontario, Canada, all payments in respect of such accounts receivable. Purchaser shall advise Wyandotte of any actual or prospective default on the part of any debtor.

4. St. Lawrence will execute and deliver to Purchaser and Bovich will cause Purchaser to execute and deliver to St. Lawrence an agreement for the sale by St. Lawrence and the purchase by Purchaser of clinker in substantially the form annexed hereto as Exhibit B. Bovich may terminate his obligation hereunder by giving St. Lawrence written notice of such election not later than June 30, 1973.

5. In the event that (i) the anti-pollution equipment installed by Wyandotte

*plus freight and canal charges from Mississauga, Ontario to Wyandotte, Michigan

is determined by the appropriate authorities to be inadequate to accomplish the intended purpose or (ii) notwithstanding approval by the appropriate authorities of such anti-pollution equipment, court action has been threatened or instituted by a private citizen for declaratory or equitable relief under the Environmental Protection Act of 1970 of the State of Michigan, and neither St. Lawrence nor Bovich is willing to assume the responsibility of defending any such action or incurring any resulting liability or the cost of such additional equipment as would appear to be required to satisfy the appropriate public or any private complainant, St. Lawrence may terminate this Agreement by written notice to Bovich not later than July 31, 1973.

6. Wyandotte shall, until the Closing Date, continue to operate its business in the usual and ordinary course and shall use its best efforts to preserve such business and to preserve for Purchaser the relationships of Wyandotte with suppliers and customers having business with Wyandotte, except for any cause not within the reasonable control of Wyandotte. Prior to the Closing Date neither St. Lawrence nor Wyandotte shall make any changes in any of the plant or equipment which shall substantially impair the present rated capacity for the manufacturing, distributing and selling of Portland cement, or the market value of such facilities, unless such capacity or value shall have been restored prior to the Closing Date.

7. Purchaser shall be entitled to all of the continuing rights and benefits and shall assume all of the continuing obligations of St. Lawrence and Wyandotte under the BASF Agreement except for the promissory notes issued by St. Lawrence to BASF which St. Lawrence agrees to pay on their respective maturity dates.

8. Purchaser shall, until the payment in full of the principal of and interest on its promissory note, continue to operate its business in the usual and ordinary course except for any cause not within the reasonable control of Purchaser.

9. The obligations of St. Lawrence and Wyandotte hereunder shall be subject to the following conditions:

(i) St. Lawrence shall have obtained the consent of BASF to the proposed transaction as required by the terms of the BASF Agreement.

(ii) St. Lawrence shall have received from Messrs. Tolleson, Burgess and Mead, counsel for Bovich and Purchaser, an opinion to the effect that Purchaser has been duly organized and exists, in good standing, under the laws of the State of Michigan and that all necessary corporate action to consummate this Agreement has been taken by Purchaser.

10. The obligations of Bovich under this Agreement shall be subject to the following conditions:

(i) The anti-pollution complaints of the Wayne County Department of Health and any other complaint or complaints under the Environmental Protection Act of 1970 of the State of Michigan shall have been adequately met or St. Lawrence shall have assumed responsibility for the satisfaction of any and all of such complaints by a written instrument in form and substance satisfactory to Bovich and his counsel.

(ii) There shall have been no material destruction of or damage to the plant or equipment which shall not have been remedied prior to the Closing Date, whether or not any resulting loss shall be insured.

(iii) All covenants on the part of St. Lawrence and Wyandotte to be performed on and prior to the Closing Date shall have been duly fulfilled.

(iv) Bovich shall have received an opinion of Messrs. Milbank, Tweed, Hadley & McCloy, counsel for St. Lawrence and Wyandotte, to the effect

that St. Lawrence is a corporation duly organized and validly existing, in good standing, under the laws of Canada, Wyandotte is a corporation duly organized and validly existing, in good standing, under the laws of the State of Michigan and all necessary corporate action on the part of St. Lawrence and Wyandotte to consummate this Agreement has been duly taken.

11. St. Lawrence and Wyandotte will at any time and from time to time after the Closing Date, at the request of Purchaser, execute and deliver all such further deeds, assignments and assurances as may be required for the better assigning, transferring and confirming to Purchaser any or all of the assets or property to be sold, assigned and transferred to Purchaser as provided herein. Bovich will and will cause Purchaser to, at any time and from time to time after the closing date at the request of St. Lawrence, execute and deliver all such further instruments as may be required for the better assuring of the security for Purchaser's promissory note.

12. This Agreement shall not be assignable by Purchaser without the prior written consent of St. Lawrence.

13. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

IN WITNESS WHEREOF Bovich has executed this Agreement and St. Lawrence and Wyandotte have caused this Agreement to be executed by their respective officers thereunto duly authorized.

/s/ Edward H. Bovich
Edward H. Bovich

ST. LAWRENCE CEMENT CO.

/s/ By
President

WYANDOTTE CEMENT INCORPORATED

/s/ By
Vice President

EXHIBIT A

December 31, 1972

PROMISSORY NOTE

\$2,500,000

WYANDOTTE CEMENT INCORPORATED, a Michigan corporation (herein called the "Company"), for value received, hereby promises to pay to the order of ST. LAWRENCE CEMENT CO., a Quebec corporation (herein called the "Payee"), at P.O. Box 520, Mississauga, Ontario, Canada, the principal sum of Two Million Five Hundred Thousand United States Dollars (\$2,500,000), in five consecutive annual installments whereof each of the first four installments shall be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) and payable on the 31st day of December commencing December 31, 1974 and whereof the fifth and final installment shall be in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) and payable on December 31, 1978, and to pay interest on the unpaid amount of each installment from the date hereof, in like money on the last day of each March, June, September and December, commencing March 31, 1974, at the rate of eight and one-half percent (8 1/2%) per annum (computed on the basis of a year of 365 days).

The Company shall have the right, on not less than five days' prior written notice to the Payee, to prepay without penalty or premium at any time all or, from time to time, part of the principal of this Note. On each prepayment, the Company shall pay interest accrued on the principal amount so prepaid to the date of such prepayment.

If any payment to be made hereunder shall become due on a Saturday, Sunday or business holiday under the laws of the State of Michigan, such payment shall be made on the next succeeding business day and such extension of time shall be included in computing any interest in respect of such payment.

If any of the following events of default shall occur and shall not have been remedied:

A. the Company shall default in the payment of the principal hereof when due and payable or in the payment for 30 days of any installment of interest hereon; or

B. the Company shall (1) apply for or consent to the appointment of a receiver, trustee or liquidator of the Company or of all or a substantial part of the assets of the Company, (2) be adjudicated a bankrupt or insolvent or (3) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against the Company in any bankruptcy, reorganization or insolvency proceeding, or corporate action shall be taken by the Company for the purpose of effecting any of the foregoing; or

C. an order, judgment or decree shall be entered, without the application, approval or consent of the Company, by any court of competent jurisdiction, approving a petition seeking reorganization of the Company or appointing a receiver, trustee or liquidator of the Company or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days;

the Payee or other holder of this Note may, by written notice to the Company, declare the principal of and accrued interest on this Note to be forthwith due and payable.

This Note shall be governed by, and construed in accordance with, the laws of the State of Michigan.

WYANDOTTE CEMENT INCORPORATED

By _____
President

EXHIBIT B

AGREEMENT dated December 31, 1973 between ST. LAWRENCE CEMENT CO., a Quebec corporation ("St. Lawrence"), and WYANDOTTE CEMENT INCORPORATED, a Michigan corporation ("Purchaser").

WITNESSETH:

In consideration of the mutual covenants of the parties hereto, St. Lawrence agrees to sell and Purchaser agrees to purchase Portland cement clinker ("clinker") in accordance with the following terms and conditions:

1. *Product, Quantity and Quality*

A. The product to be produced and sold by St. Lawrence and purchased by Purchaser is clinker produced in strict compliance with ASTM Specification C-150 and which shall have the following additional characteristics:

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C ₃ S	58.0%	minimum
Total alkali as Na ₂ O	0.85%	maximum
Free lime	1.0%	maximum
Ignition loss	0.75%	maximum
Fe ₂ O ₃	3.0%	maximum

Purchaser may upon not less than 30 days written notice to St. Lawrence specify that the alkali content of the clinker to be shipped by St. Lawrence in not more than two lake freighters in any calendar year shall not be greater than a percentage less than 0.85 but not less than 0.60, in which event the base an minimum prices per ton specified in Paragraph 5 hereof shall be increased by 3.6¢ for each 0.01% of alkali content below 0.85%.

The clinker sold by St. Lawrence to Purchaser hereunder shall be guaranteed by St. Lawrence to be in compliance with the foregoing specifications at point of loading on a lake freighter at Mississauga, Ontario.

B. The maximum annual quantity of clinker that St. Lawrence shall be obligated to sell and deliver to Purchaser by water transportation only shall be 300,000 tons (of 2,000 lbs. each) and Purchaser shall be obligated to purchase all of its requirements for clinker up to such amount. At Purchaser's request and with St. Lawrence's consent, the maximum annual quantity of clinker may be increased.

C. Purchaser shall furnish an estimate of its annual requirements for clinker to be filled by St. Lawrence each year on or before the 30th day of September prior to the year to which the estimate pertains. The estimate shall state the annual requirements in monthly amounts during the Great Lakes navigation season (normally April 1 to December 10). The quantity estimated for delivery monthly may be adjusted, provided that St. Lawrence is notified in writing by Purchaser at least 15 days prior to the beginning of the month for which an adjustment is desired.

D. Measurement of the quantity of clinker delivered shall be made by Government approved belt scale at Mississauga, Ontario, or, in exceptional cases only, by boat draft subject to verification by Purchaser.

E. To assure steady deliveries adequate to meet Purchaser's requirements hereunder, St. Lawrence shall maintain an adequate supply of clinker.

2. Analysis and Certification

A. Representative samples of clinker produced by St. Lawrence shall be taken and analyzed either daily or in lots of 1,000 tons or less to determine whether the clinker meets the specifications set out above. St. Lawrence shall submit the analysis to Purchaser so that the analysis is received by the superintendent of Purchaser's plant prior to unloading each of St. Lawrence's shipments. Each submission of analyses shall be certified in a written statement by St. Lawrence that the clinker meets all of the specifications set out above.

B. Quality control procedures and test methods to determine whether the clinker meets the specifications shall be mutually agreed upon and set forth in a manual for use by the quality control laboratories of each of the parties hereto. In the event of a dispute between the parties as to whether or not any analysis reflects that the clinker is in compliance with the specifications, the matter shall be referred to an impartial professional testing laboratory for resolution, and the parties hereto will share equally the expense of any such testing laboratory work. The decision of such testing laboratory shall be binding on the parties hereto for the purposes of this agreement. St. Lawrence and Purchaser shall each be afforded access to the clinker to which a dispute

in analytical results pertains at the time that any such impartial professional testing laboratory takes samples for resolution of the dispute.

3. *Demurrage*

Should St. Lawrence order or cause a delay in the loading of a lake freighter made available by Purchaser, the resultant demurrage shall be paid by St. Lawrence.

4. *Pollution Control*

With regard to dust emission attendant upon the loading operation, St. Lawrence and Purchaser will each take due precautions in order to comply with the requirements of the Ontario Air Pollution Act in those phases under their respective control (or in Purchaser's case, under the control of the lake freighters furnished by it).

5. *Base and Minimum Prices*

The price for clinker f.o.b. shiphold at Mississauga, Ontario, net of any sales or use or other taxes imposed by any authority shall be of the net selling price of Portland cement realized by Purchaser. Net selling price shall be defined as an invoiced price to customer net of any sales or use or other taxes imposed by any taxing authority and less cash and competitive discounts and freight to customer; provided, however, that St. Lawrence shall not be obligated to make any sales to Purchaser at a price of less than f.o.b. shipload at Mississauga, Ontario.

6. *Terms of Payment*

Invoices submitted by St. Lawrence to Purchaser shall be expressed in United States dollars per ton and payments by Purchaser shall be made to St. Lawrence, P. O. Box 520, Mississauga, Ontario, Canada within 30 days after the date of the invoice.

7. *Term of Agreement*

The term of this Agreement shall be three years commencing January 1, 1974 and ending December 31, 1976; provided, however, that Purchaser may extend the term of this Agreement for an additional two years ending December 31, 1978 by giving St. Lawrence written notice of such election not later than January 1, 1975.

8. *Inventory*

St. Lawrence shall upon Purchaser's request exert every reasonable effort to deliver a sufficient quantity of clinker over and above Purchaser's current requirements to maintain an inventory of not less than 15,000 tons as a safeguard against the possibility of interruption or delay in regular shipments by St. Lawrence to Purchaser.

9. *Force Majeure*

Failure of St. Lawrence to make or Purchaser to take any one or more deliveries when due if caused by fire, storms, floods, strikes, lockouts, accidents, war, riots, or civil commotions, inability to obtain ships or raw materials, embargoes, any federal, provincial, or state regulation, law restriction or order, seizure or requisition of the product specified in this Agreement by either the governments of Canada or the United States or of any Province or State thereof or of any agency thereof, or by reason of any compliance with a demand or request for such product for any purpose for national defence or any other cause or contingency beyond the reasonable control of the party affected (whether or not of the same kind or nature as the foregoing causes or contingencies), shall not subject the party so failing to any liability to the other.

10. *Assignability*

This Agreement shall bind and enure to the benefit of the successors and

Complaint

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assigns of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party; provided, however, that this Agreement may be assigned or transferred by either party without the prior written consent of the other party in the event of the merger or consolidation of such party with or into a corporation that shall agree in writing to assume all of the responsibilities and obligations imposed by this Agreement.

11. This Agreement shall be interpreted according to the laws of the Province of Ontario; should any dispute of any kind arise in connection with this Agreement, including but not restricting the generality of the foregoing, any question in respect to the interpretation, validity, termination or non-termination of this Agreement, the parties agree to submit to the jurisdiction of the courts of the Province of Ontario exclusively.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

ST. LAWRENCE CEMENT CO.

By _____
President

WYANDOTTE CEMENT INCORPORATED

By _____
President

IN THE MATTER OF

CRAFT RUG MILLS, INC., ET AL.

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

Docket C-2376. Complaint, April 9, 1973—Decision, April 9, 1973.

Consent order requiring an Easton, Penn., 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 Craft Rug Mills, Inc., a corporation, and Morris Goldfarb, 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 Craft Rug Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent Morris Goldfarb is an officer of said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at Line and Iron Streets, Easton, Pennsylvania.

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 was carpet style Plush made of 100 percent nylon pile and 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 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 Craft Rug Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

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

Respondents are engaged in the manufacture and sale of carpets and rugs, with their office and principal place of business located at Line and Iron Streets, Easton, Pennsylvania.

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 Craft Rug Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent, Morris Goldfarb, 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 manufactur-

ing 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 can be identified as having purchased or to whom, if identified, have been delivered the products which gave rise to the complaint, specifically, carpet style Plush made of 100 percent nylon pile, 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, specifically, carpet style Plush made of 100 percent nylon pile, so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since December 15, 1971, 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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the individual respondent named herein promptly notify the Commission of 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 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

STANDARD BRANDS, INC., ET AL.

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

Docket C-2377. Complaint, April 9, 1973—Decision, April 9, 1973.

Consent order requiring a New York City manufacturer, seller and distributor of margarines, including "Fleischmann's," and its advertising agency, among other things to cease disseminating any advertisements which represent (1) that children incur the same risks of heart and artery disease induced by blood cholesterol as middle-aged men; (2) that scientific tests establish evidence that childhood diet is causally related to premature heart and artery disease in adult life; (3) corn oil is higher in polyunsaturates or lower in saturates than other oils; and (4) use of "Fleischmann's Margarines" prevent or mitigate heart and artery disease.

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 Standard Brands, Inc., a corporation and Ted Bates & Company, Inc., a 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 Standard Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 625 Madison Avenue, New York, New York.

PAR. 2. Respondent Ted Bates & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 666 Fifth Avenue, New York, New York.

PAR. 3. Respondent Standard Brands, Inc., is now, and for some time past has been, engaged in the manufacture, sale and distribution of margarines, including several margarines sold under the trade name "Fleischmann's," which come within the classification of a "food" as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Ted Bates & Company, Inc., is now, and for some time past has been, an advertising agency of respondent Standard Brands, Inc., and now for some time past has prepared and placed for publication, and has caused the dissemination of, advertising material including, but not limited to, the advertising referred to herein, to promote the sale of respondent Standard Brands, Inc.'s "Fleischmann's Margarines" products.

PAR. 5. Respondent Standard Brands, Inc., caused the aforesaid products, when sold, to be transported from its place of business in one State of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Standard Brands, Inc., maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said businesses, respondents have disseminated and have caused 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, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the aforesaid products, and have disseminated and have caused the dissemination of advertisements concerning the said products by the United States mails and by various means 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.

PAR. 7. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

EAT TO YOUR HEART'S CONTENT.

What we eat depends on why we eat, Whether it be for pleasure, for nourishment, or just to keep trim. But how many of us eat for our heart's benefit? . . . According to latest medical opinion, a low-saturated-fat, low-cholesterol diet is still one of the best ways to a man's heart . . . Such diets invariably include a vegetable oil margarine—like Fleischmann's. Why? Because Fleischmann's is made from 100% corn oil, and *no vegetable oil lowers serum cholesterol better than corn oil*. No margarine tastes better, either. Fleischmann's has that light, distinctive flavor that has helped make it America's favorite premium margarine . . . Strike a blow for better diets. Invite Fleischmann's to dinner. And breakfast. And lunch. It might do your heart good. *P.S.* If you're interested in the variety of service material Fleischmann's offers doctors and their patients, write Fleischmann's Margarines, Box 46F, Mount Vernon, N.Y. 10559. No other margarine manufacturer is better equipped to serve you in this field . . . Fleischmann's Margarines . . . made from 100% corn oil Fleischmann's comes *Lightly Salted, Unsalted, and Soft*. And for half the calories, half the fat of regular margarines, try delicious *Diet Fleischmann's*.

HAPPY BIRTHDAY, JIMMY. TODAY YOU'RE 38 YEARS OLD.

Not a trace of gray hair. You're in the 4th grade. And there are 10 candles on your cake . . . But your body is feeling some of the strains of middle age. And it's upsetting . . . Like millions of middle-aged men, your cholesterol level may be too high. How come? The foods you eat are loaded with saturated fats. Those mountains of ice cream. 13 cent hamburgers. Butter . . . There are other problems, too. Like exercise. Six hours in front of the TV set doesn't do much for your muscles . . . Yes, Jimmy, you're a very young 38 . . . Right now, you don't worry about coronary disease or a high cholesterol level. But your doctor does. And so should your mother . . . One thing she can do to help is to improve your dietary habits. Start you eating more foods that are low in saturated fats. This involves substituting vegetable oils for animal fats wherever possible . . . One substitution you'll like, Jimmy, is Fleischmann's Margarine. It's made from 100% corn oil. And *no oil is more effective in lowering your cholesterol level*. Check your doctor. Chances are he knows all about Fleischmann's. And how it can help you enjoy a low-saturated fat diet . . . Then check your taste buds . . . You'll see why Fleischmann's rich corn oil flavor has made it a favorite in homes all across the country . . . Eat the right foods. Get the right kind of exercise. So when your next birthday rolls around, your body won't be like 38 anymore. Just a very healthy 11. Many happy returns, Jimmy . . . from Fleischmann's . . . the premium margarine doctors name most . . . and people like best. Fleischmann's Margarines

Cholesterol can build up from childhood on. Up and up until it may become a real health risk . . . More and more people are getting concerned about it. But that's not enough. You've got to take action . . . Many doctors advise everyone in your family to start eating foods that help lower cholesterol levels . . . Like Fleischmann's Margarine . . . Made from 100% corn oil, and it's low in saturated fats . . . In fact, there's no better oil to help lower cholesterol levels . . . And there's no better tasting margarine than Fleischmann's . . . Fleischmann's. the corn oil margarine doctors name most and people like best.

SHOULD AN 8-YEAR-OLD WORRY ABOUT CHOLESTEROL?

He can't worry about something he doesn't know about. But *you* should . . . Cholesterol can start building up in a kid. Up and up until he grows up with a real health risk . . . Heart specialists recommend reducing one important risk of coronary disease tomorrow by starting your family on low cholesterol meals today . . . Foods low in saturated fats, high in polyunsaturates . . . to help reduce serum cholesterol. Foods like Fleischmann's Margarine. It's made from 100% corn oil. And there's no better oil to help lower cholesterol levels . . . And no better tasting margarine. Fleischmann's—the corn oil margarine doctors name most . . . and people like best.

IS THERE A HEART ATTACK IN HIS FUTURE?

More and more doctors are coming to the conclusion that the best time to deal with coronary disease is thirty or forty years before it is likely to occur. . . . That is why they are recommending good dietary habits, especially the low-saturated-fat diet—not only for the heart patient, but for people of *all age groups*—as a means of controlling blood cholesterol and to reduce the risk of coronary disease later on. . . . Such a regimen, of course, involves the substitution of vegetable oils for animal fats wherever possible. But which vegetable oil? . . . Actually, *none has been found more effective than corn oil in lowering serum cholesterol.*¹⁵ This makes Fleischmann's Margarine a logical choice for inclusion in the diet since it is *made from 100% corn oil*, over half of which is in liquid form. . . . And don't forget . . . Fleischmann's delicious flavor has made it America's favorite premium margarine. That makes it easier for your patients to stay with the low-saturated-fat diets you recommend.

References: 1. Grande, F., *et al.*; Proc. Soc. Exp. Biol. Med. 98:436, June 1958. 2. Armstrong, W.D., *et al.*; Proc. Soc. Exp. Biol. Med. 96:302, Nov. 1957. 3. Beveridge, J.M.R., *et al.*; J. Nutr. 83:119, June 1964. 4. Perkins, R., *et al.*; JAMA 169:1731, Apr. 11, 1959. 5. Ahrens, A.H., Jr., *et al.*; Lancet 1(272):943, May 11, 1957.

Fleischmann's Margarines the only 100% corn-oil margarines available nationally in *Lightly Salted, Unsalted, and Soft* forms.

Diet Fleischmann's . . . All the advantages of corn oil, but with one-half the calories, one-half the fat of regular margarine.

PAR. 8. As used herein, the terms "polyunsaturates" and "polyunsaturated fat" shall refer to polyunsaturated fatty acids.

PAR. 9. Through the use of said advertisements and others similar thereto and not specifically set out herein, disseminated as aforesaid, respondents have represented, and are now representing, directly or by implication, that: (a) Children generally incur the same risks of premature heart and artery diseases as middle-aged men;

(b) Competent and reliable scientific evidence has established that premature heart and artery disease during adult life is causally related to diet during childhood;

(c) Corn oil is higher in polyunsaturates and lower in saturates than any other oil available for use in or used in margarines or similar food oil products;

(d) The use of Fleischmann's Margarines will prevent or mitigate heart and artery disease.

PAR. 10. In truth and in fact:

(a) Children generally do not incur the same risks of premature heart and artery diseases as middle-aged men;

(b) It has not been established by competent and reliable scientific evidence that premature heart and artery disease during adult life is causally related to diet during childhood. To the extent that any substantial connection between the two is generally recognized to exist, that connection is in the nature of a recognition that personal dietary habits or preferences are often established during childhood and last into adult life, and at that later time may influence an adult's risks of heart and artery disease that occur in connection with diet;

(c) Corn oil is not higher in polyunsaturates and lower in saturates than all other oils available for use in or used in margarines or similar food oil products;

(d) The use of Fleischmann's Margarines will not prevent or mitigate heart and artery disease. Any contribution to that effect that may be made by Fleischmann's Margarines depends on their use as a part of a low saturated fat diet.

Therefore, the advertisements referred to in Paragraphs Seven and Nine 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 statements and representations set forth in Paragraphs Seven and Nine were, and are, false, misleading and deceptive.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Standard Brands, Inc., has been, and now is, in substantial competition with corporations, firms and individuals in the sale in commerce of food products of the same general kind and nature as that sold by respondents.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ted Bates & Company, Inc., has been and now is in substantial competition in commerce with other advertising agencies.

PAR. 13. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent Stan-

dard Brands, Inc.'s products by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents, including the dissemination of "false advertisements," 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 and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Standard Brands, 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 625 Madison Avenue, New York.

Respondent Ted Bates & Company, Inc., is a corporation

organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1515 Broadway, New York, New York.

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

ORDER

It is ordered, That respondent Standard Brands, Inc., a corporation, and respondent Ted Bates & Company, Inc., a corporation, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Fleischmann's Margarines or any other margarine or any other food fat or food oil, as "food" is defined in the Federal Trade Commission Act, forthwith cease and desist from directly or indirectly:

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

(1) Represents, directly or by implication, that children generally incur the same risks of heart and artery diseases as middle-aged men, or that children incur risks of heart and artery diseases induced by blood cholesterol, or that such risks require of children the same steps of prevention or treatment required of middle-aged men.

(2) Represents, directly or by implication, that competent and reliable scientific evidence has established that premature heart and artery disease during adult life is causally related to diet during childhood, or represents that premature heart and artery disease is causally or otherwise related to, or in any manner may originate in, diet during childhood; unless respondents clearly and conspicuously disclose, if such is the case, that such causal relationship is an open question recognized by qualified experts, and that the existence of such a relationship has not been established by competent and reliable scientific evidence.

Provided, That this paragraph shall not prohibit representations that dietary habits or preferences established during childhood may last into adult life.

(3) Represents, directly or by implication, that corn oil is higher in polyunsaturates or lower in saturates than another oil or oils available for use or used in margarines or similar food oil products, unless such is the case.

(4) Represents that the use of Fleischmann's Margarines or other food fats or food oils will prevent or mitigate heart and artery disease.

Provided, That nothing in this paragraph shall prevent representations that Fleischmann's Margarines can be used as part of a diet to reduce serum cholesterol which can contribute to such effect.

B. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such food, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations or misrepresentations prohibited in Part A hereof.

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

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 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

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket 8860. Order, April 11, 1973.

Order denying respondents' motion to disqualify Commissioner Jones from participation with separate statement by Commissioner Jones in response to the motion.

MEMORANDUM OF COMMISSIONER JONES IN RESPONSE TO THE MOTION OF RESPONDENTS THAT SHE BE DISQUALIFIED FROM FURTHER PARTICIPATION IN THE PROCEEDING

Memorandum

82 F.T.C.

Respondents ITT Continental Baking Company, Inc., and Ted Bates & Company, Inc., by motion dated March 8, 1973, have moved that the Commission disqualify Commissioner Jones from further participation in the above-captioned proceeding.

In view of the fact that such a motion would be moot in the event that I should voluntarily decide not to participate in this case based on the grounds urged in the motion for my disqualification, this memorandum sets forth my views as to whether I feel myself to have prejudged any issue in this proceeding which would lead me to refrain from participating in this case.

In support of their motion, respondents rely on my recent dissent to the Commission's denial of the motion of three organizations to intervene in the instant proceeding. They also rely on several sentences contained in my April 29, 1971 speech before the Consumer Protection Conference as indicating my prejudgment or appearance of prejudgment concerning the issues in the instant proceeding. Copies of my dissent and speech are attached.

Respondents rely essentially on one phrase in a single sentence in my nine-page dissent which they claim constitutes a conclusion on my part as to the legality of respondents' advertisements which are in issue in this proceeding. This single sentence is part of my factual recitation of the intervenors' claims made in support of their motion. Intervenors in their motion argued they were within the zone of interests sought to be protected by the statute and that they were adversely affected or aggrieved persons. They assume throughout their brief that the advertisements are false in order to argue that they had the requisite interest in the case. My dissent, therefore, dealt with their arguments as they were presented and generally compared these arguments with the position of the SOUP intervenors in the Commission's proceeding involving Firestone.¹ The sentence on which respondents rely and the paragraph in which it is contained reads as follows:

Like the SOUP intervenors, the three intervenors here claim that the individuals whom they represent are exposed to, react to and are motivated by advertising for which respondents are responsible. Their members include both parents who are concerned with physical and mental growth,

¹ See *In the Matter of Firestone Tire and Rubber Co.*, Dkt. 8818, Amended Motion of Soup to Intervene and for Other Purposes, September 1, 1970. The SOUP intervenors were granted a limited right to intervene in the Firestone proceedings.

development and health of their children as well as consumer of respondents' advertised products who like the SOUP intervenors, have a special interest in the truthfulness of respondents' advertisements and who *would be aggrieved by a failure to adequately correct the false, misleading and deceptive impressions created by the challenged advertisements.* Thus these petitioners contend they represent the very persons who have personally experienced the injury which respondents' challenged advertisements are alleged in this complaint to have visited on members of the consuming public. (Respondents' emphasis) pp. 3-4 of my dissent.

Respondents claim that the phrase they emphasized constitutes a conclusion on my part as to the legality of their advertisements which are in issue in the instant proceeding. A careful reading of this phrase in the context of the dissent clearly indicates that I am discussing the intervenors' claims made in support of their motion. It in no sense can be read as a conclusion on my part as to the validity of these challenged advertisements since in the very next sentence I refer to the impact which these advertisements are alleged by the complaint to have on the public. It is also equally clear from a reading of my entire dissent that my discussion deals essentially with the arguments which the intervenors presented in support of their petition and with which I generally agreed.

The critical issues in reaching a conclusion as to the propriety of a request for intervention rests on an examination of the type of interest, if any, which the particular intervenors may have in the challenged activities and the impact of any order which the Commission might issue. The determination of these issues are essential factors in deciding whether the particular intervenor would be aggrieved or adversely affected by Commission action in the case. In order to argue that they have the requisite interest in a case, intervenors assumed that the advertisements involved are false. My summation of their argument in the phrase challenged by respondents obviously paraphrased the same assumption.

It is difficult for me to conceive how anyone could misconstrue the challenged phrase as indicating a conclusion on my part as to the legality of respondents' advertisements. Neither the particular sentence singled out by respondents nor the dissent read as a whole constitutes a prejudgment of any issue in this case nor do I believe it creates the appearance of prejudgment. *U.S. v. Grinnell Corp.*, 384 U.S. 563, 580-583 (1966). Indeed it could not since I have not prejudged any issue in this case.

Respondents' second basis for their motion for my disqualification rests on a speech which I gave at a Consumer Protection Conference in Madison, Wisconsin, on April 29, 1971, entitled

"The Responsibilities of Consumer Protection Efforts in the Field of Advertising." One section of the speech was devoted to a documented summary of recent expressions of public concern with the impact of advertising on children and suggested several steps which the advertising industry through its proposed public review board, and members of the public might voluntarily take to respond to these public concerns. A second, much briefer, section of my speech dealt with a summary of the action of the Federal Trade Commission and the Federal Communications Commission with respect to some of these areas of public concern and criticism as a prelude to my urging of my audience to act on their own to respond to these problems of public concern. I specifically prefaced my remarks on this subject by stating that I was not dealing with issues of the FTC's legal power or statutory authority to deal with these issues.² What I was concerned with, and what was the clear thrust of my speech, was that industry should act on its own voluntarily to deal with the public comment and concerns about advertising to children.

Respondents have seized on two isolated excerpts from this speech as examples of statements which they claim express conclusions involving issues raised in the instant proceeding. The full paragraph in which the first challenged statement appeared reads as follows:

It seems to me that one of the first problems which such an industry board could do would be to explore the feasibility of establishing special advertising standards for children's advertising. Given the greater impressionability of children, *their inability to distinguish fact from opinion, persuasion from teaching, or reality from fantasy or puffing*, and their greatly enhanced memorization capability, surely the advertiser must assume a high degree of responsibility for the representations which he beams to this audience. Simple factual statements of the actual performance or function of the product such as would be found in a children's text book would seem to be the ultimate [sic] goal.

² Address by Commissioner Jones before the Consumer Protection Conference, April 29, 1971, p. 11:

"I do not want to address myself here to the questions of legal power and statutory authority to create special guidelines or standards regulating the use of advertising on children's programs. Rather, I would like to focus on the steps which I believe those most directly concerned with the problem - the industry and the public - should take in order to eliminate the basis for the increasing criticism."

Moreover, I also pointed out that while the Commissioner would take action to the extent these problems engaged its jurisdiction, we could not act as respects those matters which were simply regarded as offensive. (*Id.*, pp. 11 and 14)

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Memorandum

It would be difficult to justify for children the type of puffery, hyperbole or persuasion-by-association commonly found in the typical themes in today's television commercials directed to adults. Certainly hard-sell techniques should have no place in these commercials. If the industry can adopt special guidelines to limit the advertising of cigarettes to young people, it should have no difficulty in devising special advertising standards for the promotion of products addressed to children. (Respondents' emphasis) p. 12 of my speech.

Respondents apparently believe that my use of the word "given," for which I might have substituted the words "taken as a premise" or "assuming" indicates that prejudgment.

In order to bolster that argument, respondents attempt to link these remarks to a later footnote in my speech in which I was documenting for my audience the public actions which FTC has taken which involved children's advertising. This footnote, which appeared on page 13 of my speech, reads as follows:

⁷ The FTC has also recently proposed and filed several complaints either involving advertising of children's products or making special claims about the products' value to children's health.

The footnote relates to the sentence in the text which states: In December 1970, the FTC announced its intention to work closely with the Federal Communications Commission in exploring the possibility of conducting joint FTC-FCC hearings on TV advertising beamed to children.⁷

This footnote does not refer to the textual passage on page 12 of my speech which respondents' have challenged. It was supplied solely for informational purposes in the portion of my speech which generally outlined the public actions of regulatory agencies relating to children's advertising.

The entire speech makes it patently clear that I was in no way dealing with or discussing the truth or falsity of any particular advertising claims, much less of any claims in this case, and that the speech was in no way designed or offered as taking any position involving the merits or lack of merit of any allegations in the instant complaint. It is difficult for me to see, therefore, that the particular excerpts relied upon by respondents could possibly be construed now or were at the time construed by the audience as a prejudgment of issues in this case.

I affirm without any equivocation that I have not prejudged any issue in this case. Therefore, I decline to disqualify myself from further participation in this proceeding.

I shall not be present and shall not participate in any deliberation or decision of the Commission concerning respondents' motion that the Commission disqualify me from further participation in this proceeding.

March 16, 1973

This matter is before the Commission upon respondents' motion filed March 8, 1973, to disqualify Commissioner Jones from further participation in the captioned proceeding on the ground that Commissioner Jones has prejudged, or at least given the appearance of having prejudged, factual issues in this case.

In response to that motion, Commissioner Jones on March 16, 1973, filed for the record a memorandum stating that she declined to disqualify herself, setting forth her reasons and stating she had not prejudged any issue in this case. She also stated that she will neither be present nor participate in any deliberation or decision by the Commission concerning her disqualification. On March 27, 1973, petitioners filed with the Commission a response to Commissioner Jones' answer to the motion.

The Commission has carefully considered the documents submitted by ITT Continental Baking Company, Inc., and Ted Bates & Company, Inc., and Commissioner Jones' response to their motion, along with her speeches and dissenting opinion, alleged by them to support the motion to disqualify. Upon such consideration, the Commission has determined that there is no basis in law or fact for the relief requested. Accordingly,

It is ordered, That the motion to disqualify Commissioner Jones be, and it hereby is, denied. Commissioner Jones did not participate in the Commission's consideration and decision on this matter.

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket 8860. Order, April 11, 1973.

Order denying request for a ruling of disqualification, and denying renewed motion to intervene by Consumers Federation of America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc. Response by Commissioner MacIntyre. Separate Statement by Commissioner Jones.

RESPONSE BY COMMISSIONER EVERETTE MACINTYRE TO THE RENEWED MOTION OF CONSUMERS FEDERATION OF AMERICA, CONSUMERS UNION OF THE UNITED STATES, INC., AND FEDERATION OF HOMEMAKERS, INC. TO INTERVENE AS PARTIES; AND MOTION REQUESTING DISQUALIFICATION OF COMMISSIONER MACINTYRE FROM PARTICIPATION IN THIS PROCEEDING

On March 29, 1973, Victor H. Kramer, Esquire, and Larry P. Ellsworth, Esquire, counsel for Consumers Federation of

America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc. filed a motion requesting my disqualification from participation in this proceeding. The motion is based upon the allegation that I am not independent of undue influence from the President of the United States. This allegation in turn is based upon the premise that since I, at the present time, am serving pursuant to the terms of an Executive Order number 11704, issued February 28, 1973, providing for my exemption from the application of the mandatory separation provision of the Civil Service Retirement Act (5 U.S.C. § 8335), until February 28, 1974, I am not free from undue influence and therefore capable of rendering independent judgment in the discharge of my duties and responsibilities.

It is further alleged that I am serving at the pleasure of the President of the United States and therefore subject to undue influence and pressure from him.

My response to those allegations is simply this. I deny that they have any factual foundation and I reject any thought, allegation or contention totally that I am now, or have at any time in the past, been subjected to undue influence or pressure from the President of the United States or anyone else connected with the White House. Moreover, I reject and refute any notion, allegation or contention that I would have succumbed to any undue influence or pressure from the President of the United States or anyone connected with the White House if such had been exerted or otherwise evidenced regarding my conduct in the discharge of my duties as a member of the Federal Trade Commission.

I am not aware, during my experience as a member of the Federal Trade Commission, of communications from the White House regarding decisions or other actions I participated in or was about to participate in at the Federal Trade Commission. In fact, my experience is in accord with the advice once provided by an Assistant to the President in a memorandum to members of the White House staff to the effect that there should be no such communication between them and members of the independent regulatory agencies, such as the Federal Trade Commission. The memorandum to which I refer is one that was directed to members of the White House staff under date of May 21, 1969, from an Assistant to the President who had some responsibilities regarding recommendations of nominations of persons for membership on such agencies. There it was stated "the Commissioners of these agencies have quasi-judicial responsibilities for individual cases coming before their agencies on rates,

license renewals, route awards, and so forth. Obviously, any executive interference in this quasi-judicial function would be highly improper." Copies of that memorandum were provided members of the independent regulatory agencies and I attach a photocopy of the same (see Appendix A).

My views concerning the propriety and need for preserving my independence as a member of the Federal Trade Commission are well-known. Likewise, are well-known my views that there should be no intermeddling by persons in one agency of the government into the affairs of another agency of the government. That applies especially to these so-called independent regulatory agencies.

On February 26, 1973, Victor H. Kramer, Esquire, wrote and asked me for the privilege of putting to me several questions regarding my selection by the President of the United States as a nominee to be a member of the Federal Trade Commission. I agreed to have him ask me a number of questions. On March 8, 1973, he appeared at my office and did ask me a number of questions. In that connection it should be noted that he asked no question concerning the issuance of any Executive Order which exempted me from the application of the mandatory separation provision of the Civil Service Retirement Act (5 U.S.C. § 8335).

Although movants challenged the legality of the action of the President of the United States in issuing executive orders exempting members of independent regulatory agencies from the application of the mandatory separation provision of the Civil Service Retirement Act (5 U.S.C. § 8335), they do not account for the many executive orders which have been agencies from the application of that law.¹

In conclusion, I wish to reiterate that I reject the notion, allegation and contention that I am subject to any undue influence or pressure from the White House and that I am improperly serving as a member of the Federal Trade Commission.

¹ Since the automatic provision became effective, January 24, 1942, many members of independent regulatory agencies have served under executive orders exempting them from the application of the mandatory separation provision. Some of these exemptions have applied to members of the Federal Trade Commission during the Administrations of President Franklin D. Roosevelt and President Harry S. Truman. Indeed, during the Administration of President Truman a majority of all members of the Federal Trade Commission were serving after they had passed the age of 70 and were exempted from the application of the provision of law in question. More recently, members of other independent regulatory agencies have been so exempted.

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Response

Moreover, I shall not recuse myself or otherwise refrain from participating as a member of the Federal Trade Commission in response to the motion which was filed by Victor H. Kramer, Esquire, et al., on March 29, 1973.

April 4, 1973

APPENDIX A

THE WHITE HOUSE
WASHINGTON
May 21, 1969

MEMORANDUM FOR THE WHITE HOUSE STAFF

Subject: Contacts between the White House and the Independent Regulatory Agencies

The independent regulatory agencies include:

Civil Aeronautics Board
Federal Communications Commission
Federal Maritime Commission
Federal Power Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission

This memorandum discusses some important points you should bear in mind with regard to these agencies.

Contacts between the White House and the regulatory agencies are very sensitive on two grounds: (1) The Congress has a special relationship with these agencies, viewing them in part as instruments of the Congress in its constitutional power to regulate interstate and foreign commerce; (2) the Commissioners of these agencies have quasi-judicial responsibilities for individual cases coming before their agencies on rates, license renewals, route awards, and so forth. Obviously, any executive interference in this quasi-judicial function would be highly improper.

In spite of these sensitivities, matters often arise which do require official or informal contacts with the Commissioners or the staffs of these agencies. The following guidelines are provided for any exposure you may have to these agencies or problems pending before them. They also apply in those cases where other agencies of the executive branch act in a regulatory or quasi-judicial role.

1. Any expression of interest or any attempt to influence the

outcome of any case pending is illegal. These cases are typically extremely complicated, and it is very dangerous to make judgments on the basis of limited information as to how the White House should like to see any case resolved. You should in no way express interest to these agencies in the outcome of pending cases and in no way attempt to influence the Commissioners or hearing examiners in their decisions on any case pending before their agencies.

2. It is important to remember that the cases that come before these agencies are often extremely important to the parties concerned and involve large amounts of money. They are, therefore, very closely watched for any evidence of improper procedure or influence. It is important to avoid even the mere *appearance* of interest or influence.

3. You may, of course, listen to comments and views on such cases when they are volunteered to you. However, such visits or the submission of written briefs should not be encouraged — better still, they should be sidestepped and avoided wherever possible.

4. Inquiries about the status of cases pending before these agencies should not be made. Instead, the inquirer should be advised to contact the agency directly.

5. The policies and findings of these agencies often interact heavily with the policies of the executive branch of Government. Transportation policy, for instance, is affected heavily by the policies of the ICC and the CAB. There is, therefore, occasion for White House staff contact with these agencies. However, for the reasons cited above, you should keep my office informed of any contact you may have with these agencies. Please call Dan Hoigren or Tom Whitehead *in advance* to assure appropriateness of such contacts.

/s/ Peter M. Flanigan
Assistant to the President

SEPARATE STATEMENT OF COMMISSIONER JONES

Petitioners urge the single most serious issue which could be raised with respect to the integrity of the Commission's actions and decisions in their motions seeking the disqualification of Commissioner MacIntyre. They argue that the President's action in purporting to exempt Commissioner MacIntyre from the compulsory retirement provisions of the Civil Service Retirement Act (5 U.S.C. § 8335 (1970)) for one year periods has converted Commissioner MacIntyre's status on the Commission

from that of a quasi-judicial official serving for a fixed 7-year term removable only for cause to that of an official serving strictly at the pleasure of the President. They argue further that Commissioner MacIntyre's acquiescence in the need for these exemptions necessarily deprives him of the environment of independence which the Congress intended Commissioners to have when it provided for them to serve for a fixed term. This view of the Congressional intent was confirmed by the Supreme Court in its decisions in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935) and *Wiener v. United States*, 357 U.S. 349 (1958).

No issue is raised by the petition of actual undue influence. The issue raised goes solely to the legality of the circumstances under which Commissioner MacIntyre finds himself - circumstances, I might add, over which he has no control. If Commissioner MacIntyre's status on the Commission is governed by the terms of the Federal Trade Commission Act (15 U.S.C. 41 (1970)), then he is sitting entirely lawfully on the Commission since no action has been taken to remove him on the only grounds provided by that Act for his removal, namely "inefficiency, neglect of duty, or malfeasance of office." Paradoxically, Commissioner MacIntyre would have no way to test out this view of the law since the President is apparently asserting another view but at the same time has chosen not to apply it in Commissioner MacIntyre's case. By so acting, the President has in one sense removed any realistic incentive for Commissioner MacIntyre to raise the issue. Even his resignation would not provide him with a vehicle to resolve the issue.

In effect, therefore, petitioners are the only parties who can raise this issue and have it resolved by the courts since as members of the public they are entitled to a fair and impartial hearing of the issues in this case by a body duly constituted as Congress intended quite apart from whether they may or may not have the type of interest in this proceeding to be granted the right to intervene.¹

The question of whether the Commission is a duly constituted body as created by Congress depends squarely on a resolution of the issue raised by petitioners as to whether the status of Commissioners upon reaching their seventieth year is governed

¹ The Commission has previously denied these petitioners the right to intervene as parties based on their claimed status as persons whose interests could be injured by the Commission's disposition of the issues in this case.

by Section 41 of the Federal Trade Commission Act or by Section 8335 of the Civil Service Retirement Act (5 U.S.C. 8335 (1970)). I believe that no Commissioner should be forced to serve on the Commission upon reaching his seventieth birthday under the present circumstances of legal uncertainty surrounding their legal rights. This issue must be resolved. I do not believe it can be resolved by the Commission and hence I am concurring in the Commission's denial of this Petition since it is critical to the independence of the agency as it was originally conceived of by Congress. I am hopeful that the Court of Appeals will in fact hear and determine this issue. April 11, 1973

ORDER (1) DENYING REQUEST FOR A RULING OF DISQUALIFICATION, AND (2) DENYING RENEWED MOTION TO INTERVENE

On March 29, 1973, counsel for Consumers Federation of America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc., filed with the Secretary of the Commission a document entitled "Renewed Motion . . . to Intervene as Parties; and Motion Requesting Disqualification of Commissioner MacIntyre from Participation in This Proceeding" and a memorandum in support thereof.

In their papers, movants request Commissioner MacIntyre to withdraw from participation in this proceeding or, in the alternative, that the Commission determine that he is disqualified from participation in this proceeding. The ground asserted is that Commissioner MacIntyre is subject to alleged "undue influence from the President of the United States" arising out of the issuance by the President of Executive Orders exempting Commissioner MacIntyre from the mandatory separation provision of the Civil Service Retirement Act, 5 U.S.C. § 8335 (1970). Additionally, movants seek to have the Commission reconsider its order of February 16, 1973, which denied at that time their request for status as intervening parties in this proceeding. The basis for seeking reconsideration of that Order is their view that Commissioner MacIntyre was disqualified from participating in that ruling.

On April 4, 1973, Commissioner MacIntyre circulated to other members of the Commission, and filed for the public record, a statement denying that he has been subject to any improper influence and declining to withdraw from this proceeding. On April 9, 1973, movants filed with the Commission a response to Commissioner MacIntyre's statement.

The Commission has considered the documents submitted by moving organizations and Commissioner MacIntyre's statement in response. Upon such consideration, the Commission

finds no basis in law or fact for the relief requested. Accordingly, *It is ordered*, That the motion to disqualify Commissioner MacIntyre in this proceeding be, and it hereby is, denied.

The Commission further finds no reason to reconsider its decision of February 16, 1973, denying intervention. Accordingly,

It is further ordered, That movants' renewed motion to intervene as parties be, and it hereby is, denied.

Commissioner MacIntyre did not participate in the Commission's consideration and disposition of the above motions. Chairman Engman did not participate in the denial of the renewed motion to intervene for the reason that he was not a Commissioner at the time the original ruling on intervention was made. Commissioner Jones filed a separate statement.

IN THE MATTER OF

TASTEE-FREEZ INTERNATIONAL, INC., ET AL.

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

Docket C-2378. Complaint, April 11, 1973—Decision, April 11, 1973.

Consent order requiring a Chicago, Illinois, franchisor of a national chain of soft ice cream stores, among other things to cease requiring its licensees to purchase their total requirements for ice cream mix and other products and services from it or its designated suppliers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15 U.S.C. Section 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Tastee-Freez International, Inc. (hereinafter sometimes referred to as "Tastee-Freez" or respondent), is a corporation organized and doing business under the laws of the State of Illinois, with its principal offices and place of business at 1200 North Homan Avenue, Chicago,

Illinois. It is engaged in the franchising and licensing of persons with respect to the operation of countertop restaurant businesses bearing the registered trademark and trade name "Tastee-Freez." With approximately \$197,400,000 in gross sales for 1969, the Tastee-Freez system ranked fifth among franchise snack and take-out organizations in the United States. Its franchise system is three-tiered, consisting of Tastee-Freez, area franchisees, and licensees or store owners. Approximately 95 franchise territories within the United States are assigned to persons designated as "franchisees." Each is authorized, by means of a franchise agreement, with respect to a designated geographic area, both to sell Tastee-Freez soft ice cream and other food products and to license other persons to do the same. Tastee-Freez requires that its franchisees license store owners by means of agreements which conform substantially to sample agreements furnished by Tastee-Freez. In the United States, approximately 23 franchises are held by wholly-owned subsidiary companies of Tastee-Freez International, Inc., and approximately 72 franchises are owned by independent businesses. Some franchise territories include parts of several states, and others are wholly contained within one state. Approximately 1233 persons within the United States are designated as "licensees," and each is authorized, by means of an operator's license agreement between itself and a Tastee-Freez franchisee, to sell Tastee-Freez soft ice cream and other food products from a designated store location. Approximately 177 stores are licensed directly by Tastee-Freez or one of its wholly-owned subsidiary companies, and approximately 1056 stores are licensed by independent franchisees of Tastee-Freez. Under the terms of their agreements a substantial number of licensees are required to purchase all of their requirements of Tastee-Freez soft ice cream mix from their franchisee or the franchisee's designated sources of supply, and each licensee agrees that it will not prepare, manufacture or dispense any soft ice cream or ice milk product other than "Tastee-Freez" from its establishment. Each licensee is further required to pay to its franchisee a "surcharge" of 36 cents for each gallon of ice milk or ice cream mix used in its establishment for the preparation of Tastee-Freez. Thirteen cents (13¢) of this surcharge received by franchisees is remitted to Tastee-Freez pursuant to the terms of their franchise agreements with Tastee-Freez. Tastee-Freez received from its franchisees \$709,470 as income from mix surcharges and \$464,563 from franchise fees in 1970. Through its operation of Tastee-Freez Buying Association, Tastee-Freez

is also engaged in the sale of food products and restaurant supplies to its franchisees and to their licensees. Tastee-Freez received \$897,069 from the sale of food and supplies to Tastee-Freez franchisees and licensees in 1970, including \$55,770 from the sale of ice milk and ice cream mixes. Through its operation of Tastee-Freez Leasing Company, Tastee-Freez is further engaged in the leasing of real estate to Tastee-Freez franchisees and licensees in connection with the operation of their restaurant businesses.

PAR. 2. Respondent Mason-Dixon Tastee-Freez, Inc. (hereinafter sometimes referred to as "Mason-Dixon" or "respondent"), is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal offices and place of business at 113 W. Main Street, Waynesboro, Pennsylvania. Mason-Dixon is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 15 Tastee-Freez restaurants in Maryland and Pennsylvania. Mason-Dixon is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. Mason-Dixon reported \$104,265 in sales of ice milk mix and payments of \$8,471 in surcharges to respondent Tastee-Freez International, Inc., for 1970.

PAR. 3. Respondent Crawford's Fast Foods, Inc. (hereinafter sometimes referred to as "Crawford" or "respondent"), doing business as Tastee-Freez of Georgia, is a corporation organized and doing business under the laws of the State of Georgia, with its principal offices and place of business at 2435 Stone Mountain-Lithonia Road, Lithonia, Georgia. Crawford is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 54 Tastee-Freez restaurants in the State of Georgia. Crawford is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. Crawford reported \$218,833 in sales of ice milk mix and payments of \$17,588 in surcharges to respondent Tastee-Freez International, Inc., for 1970.

PAR. 4. Respondent Tastee-Freez of Delmarva, Inc. (hereinafter sometimes referred to as "Delmarva" or "respondent"), is a corporation organized and doing business under the laws of the State of Delaware, with its principal offices and place of business at 6269 Leesburg Pike, Falls Church, Virginia. Delmarva is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 40 Tastee-Freez restaurants in Delaware, Maryland

and Virginia. Delmarva is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. Respondent Delmarva reported approximately \$300,000 in sales of ice milk mix and payments of approximately \$26,000 in surcharges to respondent Tastee-Freez International, Inc., for 1970.

PAR. 5. Respondent Tastee-Freez of North Carolina, Inc. (hereinafter sometimes referred to as "North Carolina" or "respondent"), is a corporation organized and doing business under the laws of the State of North Carolina with its principal offices and place of business at 323 W. Martin Street, Raleigh, North Carolina. North Carolina is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 88 Tastee-Freez restaurants in the State of North Carolina. North Carolina is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. North Carolina's licensees purchased approximately \$580,000 worth of ice milk mix from North Carolina's designated suppliers, and North Carolina paid \$41,244 in surcharges to respondent Tastee-Freez International, Inc., in 1970. North Carolina operates under the same management as respondent South Carolina Tastee-Freez, Inc.

PAR. 6. Respondent South Carolina Tastee-Freez, Inc. (hereinafter sometimes referred to as "South Carolina" or "respondent"), is a corporation organized and doing business under the laws of the State of South Carolina with its principal offices and place of business at 323 W. Martin Street, Raleigh, North Carolina. South Carolina is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 12 Tastee-Freez restaurants in the State of South Carolina. South Carolina is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. South Carolina's licensees purchased approximately \$44,000 worth of ice milk mix from South Carolina's designated supplier, and South Carolina paid \$4,200 in surcharges to respondent Tastee-Freez International, Inc., in 1970. South Carolina operates under the same management as respondent Tastee-Freez of North Carolina, Inc.

PAR. 7. Respondent Shenandoah Tastee-Freez of Winchester, Inc. (hereinafter sometimes referred to as "Winchester" or "respondent"), is a corporation organized and doing business

under the laws of the State of Virginia with its principal offices and place of business at Martinsburg Pike, Box 321, Winchester, Virginia. Winchester is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. Winchester reported \$184,269 in sales of ice milk mix and payments of \$17,166 in surcharges to respondent Tastee-Freez International, Inc., for 1970. Winchester operates under the same management as respondents Shenandoah Tastee-Freez of Martinsburg, Inc., and Tastee Foods of Virginia, Inc.

PAR. 8. Respondent Shenandoah Tastee-Freez of Martinsburg, Inc. (hereinafter sometimes referred to as "Martinsburg" or "respondent"), is a corporation organized and doing business under the laws of the State of West Virginia with its principal offices and place of business at Martinsburg Pike, Box 321, Winchester, Virginia. Martinsburg is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 13 Tastee-Freez restaurants in Maryland, Pennsylvania and West Virginia. Martinsburg is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees in connection with the operation of their restaurant businesses. Martinsburg reported \$41,360 in sales of ice milk mix and payments of \$5,116 in surcharges to respondent Tastee-Freez International, Inc. for 1970. Martinsburg operates under the same management as respondents Shenandoah Tastee-Freez of Winchester, Inc., and Tastee Foods of Virginia, Inc.

PAR. 9. Respondent Tastee Foods of Virginia, Inc. (hereinafter sometimes referred to as "Tastee Foods" or "respondent"), is a corporation organized and doing business under the laws of the State of Virginia with its principal offices and place of business at 42 Rouss Avenue, Winchester, Virginia. Tastee Foods is a franchisee of respondent Tastee-Freez International, Inc., and it licenses 29 Tastee-Freez restaurants in the State of Virginia. Tastee Foods is engaged in both the sale of food products, restaurant supplies and restaurant equipment and the leasing of real estate to its licensees and to licensees of respondents Shenandoah Tastee-Freez of Winchester, Inc., and Shenandoah Tastee-Freez of Martinsburg, Inc., in connection with the operation of their restaurant businesses. Tastee Foods operates under the same management as respondents Winchester and Martinsburg.

PAR. 10. In the course and conduct of respondents Tastee-Freez, Crawford, Mason-Dixon, Delmarva, North Carolina,

South Carolina, Winchester, Martinsburg and Tastee Foods businesses of licensing and relicensing the Tastee-Freez trademarks and trade names and of engaging in the purchase and sale of commodities to and through their licensees or direct to the consuming public there is now and has been for several years last past a constant, material and increasing flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. Except to the extent that competition has been hampered and restrained by reason of the practices hereinafter alleged, respondents Tastee-Freez, Crawford, Mason-Dixon, Delmarva, North Carolina, South Carolina, Winchester, Martinsburg and Tastee Foods are in substantial competition in commerce with other persons engaged in the licensing of trademarks and trade names for use in connection with restaurant businesses, in the sale at wholesale of food products, restaurant supplies and restaurant equipment, and in the leasing of real estate; and respondents' licensees are in substantial competition in commerce with one another and with other persons engaged in the sale of food at retail to the public.

PAR. 12. In the course and conduct of their businesses respondents Tastee-Freez, Crawford, Mason-Dixon, Delmarva, North Carolina, South Carolina, Winchester, Martinsburg and Tastee Foods have engaged and are continuing to engage in the following practices enumerated in this paragraph:

1. For several years, at least since 1965, respondents Tastee-Freez, Crawford, Mason-Dixon, Delmarva, North Carolina, South Carolina, Winchester, Martinsburg and Tastee Foods have pursued a plan or policy, the purpose or effect of which is to require that Tastee-Freez licensees purchase from Tastee-Freez, from their franchisee or from designated suppliers all of the ice cream or ice milk mix and shake base mix used by the licensees in their restaurant businesses.

2. In furtherance of this plan or policy, respondent Tastee-Freez has included and continue to the present time to include in its operator's license agreements requirements that its direct Tastee-Freez licensees purchase from Tastee-Freez or from its designated suppliers all of the ice cream or ice milk mix and shake base mix used by the licensees in their restaurant businesses. By further including such requirements in the operator's license agreement forms furnished to their franchisees for use with their indirect licensees, respondents Tastee-Freez encourage and acquiesce in the imposition of such restrictions by its franchisees on its indirect licensees.

3. In furtherance of this plan or policy, respondents Crawford,

Mason-Dixon, Delmarva, North Carolina, South Carolina, Winchester, Martinsburg and Tastee Foods have included and continue to the present time to include in their operator's license agreements requirements that their Tastee-Freez licensees purchase from them or from their designated suppliers all of the ice cream or ice milk mix and shake base mix used by the licensees in their restaurant businesses.

These practices, among others, constitute unfair methods of competition in commerce and unfair acts and practices in commerce.

PAR. 13. The above acts and practices have the capacity and tendency to unduly hinder, suppress, lessen and eliminate competition with the following effects, among others:

(a) Tastee-Freez requires or reserve the right to require that its direct licensees purchase from Tastee-Freez or from its designated suppliers their total requirements of ice cream or ice milk mix and shake base mix;

(b) Competition between Tastee-Freez, its designated suppliers and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(c) Tastee-Freez licensees of respondent Crawford are required to purchase from Crawford their total requirements of ice cream or ice milk mix and shake base mix;

(d) Competition between Crawford and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(e) Tastee-Freez licensees of respondent Mason-Dixon are required to purchase from Mason-Dixon their total requirements of ice cream or ice milk mix and shake base mix;

(f) Competition between Mason-Dixon and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(g) Tastee-Freez licensees of respondent Delmarva are required to purchase from Delmarva their total requirements of ice cream or ice milk mix and shake base mix;

(h) Competition between Delmarva and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(i) Tastee-Freez licensees of respondents North Carolina and South Carolina are required to purchase from Coble Dairy Products Cooperative, Inc., North Main Street, Lexington, North Carolina, or from other designated dairies their total requirements of ice cream or ice milk mix and shake base mix;

(j) Competition between Coble Dairy Products Cooperative,

Inc., other designated dairies and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(k) Tastee-Freez licensees of respondent Winchester are required to purchase from Winchester their total requirements of ice cream or ice milk mix and shake base mix;

(l) Competition between Winchester and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(m) Tastee-Freez licensees of respondent Martinsburg are required to purchase from Martinsburg or from its designated dairies their total requirements of ice cream or ice milk mix and shake base mix;

(n) Competition between Martinsburg, its designated dairies and other local suppliers of ice cream or ice milk and shake base mix has been or may be eliminated;

(o) Tastee-Freez licensees of respondent Tastee Foods are required to purchase from Tastee Foods or from its designated dairies their total requirements of ice cream or ice milk mix and shake base mix;

(p) Competition between Tastee Foods, its designated dairies and other local suppliers of ice cream or ice milk mix and shake base mix has been or may be eliminated;

(q) Tastee-Freez licensees of respondents Crawford, Mason-Dixon, Delmarva, North Carolina, South Carolina, Winchester, Martinsburg and Tastee Foods pay or have paid or may pay to said respondents directly or through respondents' designated dairies compensation for ice cream or ice milk mix in excess of the actual cost to respondents of the mix plus the 36-cent surcharge provided in their license agreements;

(r) Respondents Crawford, Mason-Dixon, Delmarva, North Carolina, South Carolina, Winchester, Martinsburg, and Tastee Foods have received or may receive commissions or other compensation from designated dairies or from suppliers to designated dairies with respect to the sale of ice cream or ice milk mix to their Tastee-Freez licensees.

PAR. 14. The aforesaid acts and practices have the tendency to unduly hinder competition and have injured, hindered, suppressed, lessened or eliminated actual and potential competition to the prejudice and injury of the public, and thus constitute unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of 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 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 Tastee-Freez International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 1200 North Homan Avenue, Chicago, Illinois.

2. Respondent Crawford's Fast Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 2435 Stone Mountain - Lithonia Road, Lithonia, Georgia.

3. Respondent Mason-Dixon Tastee-Freez, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 113 W. Main Street, Waynesboro, Pennsylvania.

4. Respondent Tastee-Freez of Delmarva, 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 6269 Leesburg Pike, Falls Church, Virginia.

5. Respondent Tastee-Freez of North Carolina, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 323 W. Martin Street, Raleigh, North Carolina.

6. Respondent South Carolina Tastee-Freez, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its office and principal place of business located at 323 W. Martin Street, Raleigh, North Carolina.

7. Respondent Shenandoah Tastee-Freez of Winchester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Martinsburg Pike, Box 321, Winchester, Virginia.

8. Respondent Shenandoah Tastee-Freez of Martinsburg, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business located at Martinsburg Pike, Box 321, Winchester, Virginia.

9. Respondent Tastee Foods of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 42 Rouss Avenue, Winchester, Virginia.

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

ORDER

I

It is ordered, That respondent Tastee-Freez International, Inc. (hereinafter sometimes referred to as "Tastee-Freez" or "respondent"), respondents Crawford's Fast Foods, Inc., Mason-Dixon Tastee-Freez, Inc., Tastee-Freez of Delmarva, Inc., Tastee-Freez of North Carolina, Inc., South Carolina Tastee-Freez, Inc., Shenandoah Tastee-Freez of Winchester, Inc., Shenandoah Tastee-Freez of Martinsburg, Inc., and Tastee Foods of Virginia, Inc. (hereinafter sometimes referred to as "franchisees" or "respondents"), corporations, their successors and assigns, officers, directors, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the franchising or licensing of persons with respect to the operation of a restaurant

business, the operation of a restaurant food supply business, or the operation of a restaurant equipment supplies business, such franchising, licensing and operations constituting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from requiring, regardless of the language of any franchising or licensing contract between respondents and their licensees, in any manner or by any means directly or indirectly, including through the use of a quality control program, their franchisees or their licensees or their franchisees' licensees to purchase ice cream or ice milk mix, shake base mix, meat products, sundae toppings, restaurant supplies, restaurant equipment (except in initial installations), services or any other products from Tastee-Freez, Tastee-Freez franchisees or from any other source except as hereinafter provided.

II

It is further ordered, That respondent Tastee-Freez International, Inc., within thirty (30) days of the final entry of this order, notify by letter each of its franchisees of the entry of this order; urge that each of them take all necessary steps to bring existing license agreements between each of them and its licensees into conformity with Paragraphs I and III of this order and require that each franchisee, at the time of obtaining or renewing its franchise, agree that each license agreement into which it enters shall conform to Paragraphs I and III of this order; will send to each present franchisee and each new franchisee during the period of ten (10) years after the entry of this order a copy of a form of license agreement conforming to Paragraphs I and III of this order; require a response from each such franchisee within fifteen (15) days advising respondent Tastee-Freez International, Inc., as to whether such franchisee will conform to the provisions of Paragraphs I and III of this order and will use said form license; advise each such franchisee in the aforementioned letter that its response will be reported to the Federal Trade Commission for such action as the Commission may deem appropriate; and forward to the Federal Trade Commission within 30 days after the date of sending the letter to Tastee-Freez franchisees, copies of all the aforementioned responses of the franchisees, at the same time notifying the Commission as to the identity of each franchisee who has not responded. Respondent Tastee-Freez International, Inc., is directed to include with the aforementioned letter to its franchisees a copy of this order.

III

It is further ordered, That nothing in this order shall prohibit respondent Tastee-Freez International, Inc., or any franchisee respondent from establishing and enforcing reasonable minimum standard specifications or formulae for products sold or used by Tastee-Freez franchisees or licensees. If any respondent establishes such standards, specifications or formulae it shall forward a copy of them to the Federal Trade Commission within twenty (20) days after forwarding a copy of them to any licensee.

IV

It is further ordered, That respondents Tastee-Freez International, Inc., Crawford's Fast Foods, Inc., Mason-Dixon Tastee-Freez, Inc., Tastee-Freez of Delmarva, Inc., Tastee-Freez of North Carolina, Inc., South Carolina Tastee-Freez, Inc., Shenandoah Tastee-Freez of Winchester, Inc., Shenandoah Tastee-Freez of Winchester, Inc., Shenandoah Tastee-Freez of Martinsburg, Inc., and Tastee Foods of Virginia, Inc., forward or deliver by ordinary mail within thirty (30) days a copy of this order and of attached letter "A" to each of their present Tastee-Freez franchisees or licensees and to each person who becomes one of their Tastee-Freez franchisees or licensees within ten (10) years after the effective date of this order.

V

It is further ordered, That respondents Tastee-Freez International, Inc., Crawford's Fast Foods, Inc., Mason-Dixon Tastee-Freez of North Carolina, Inc., South Carolina Tastee-Freez, Inc., Shenandoah Tastee-Freez of Winchester, Inc., Shenandoah Tastee-Freez of Martinsburg, Inc., and Tastee Foods of Virginia, Inc., within ninety (90) days after service upon them of this order, file with the Commission reports, in writing, setting forth in detail the manner and form in which they have complied with the terms of this order.

It is further ordered, That respondents Tastee-Freez International, Inc., Crawford's Fast Foods, Inc., Mason-Dixon Tastee-Freez, Inc., Tastee-Freez of Delmarva, Inc., Tastee-Freez of North Carolina, Inc., South Carolina Tastee-Freez, Inc., Shenandoah Tastee-Freez of Winchester, Inc., Shenandoah Tastee-Freez of Martinsburg, Inc., and Tastee Foods of Virginia, Inc. notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor

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corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of the order: *Provided, however*, That if respondents do not have thirty (30) days lead time between such proposal or such change and its consummation respondents shall notify the Commission thereof at the earliest feasible time before consummation and any entity which may succeed to the business covered by this order will have been advised of the provisions of this order and will have agreed to be bound thereby.

Letter "A"

Gentlemen:

The Federal Trade Commission has entered an Order which, among other things, prohibits [] from requiring you, in any manner or by any means, directly or indirectly, to purchase from us or from designated suppliers ice cream or ice milk mix, shake base mix, meat products, sundae toppings, restaurant supplies, restaurant equipment (except in original installations) or any other products. A copy of said Order is enclosed.

You may, however, consistent with the Order, be required to confine your purchases of any of the aforementioned products to those which meet reasonable specifications promulgated by [] or []. In addition, in order to assure payment of the surcharge on mix provided for in your license agreement, you may be required to choose either to (1) post a reasonable bond therefor or (2) pay all surcharges due on mix within 48 hours of placing an order on mix and in any event no later than the time of delivery of the mix or (3) agree with your supplier of mix that he will bill you for, collect, and pay directly to [] and [] the surcharge on the mix he sells to you and send with each such payment a report of the quantity of mix to which the forwarded surcharge is applicable.

Sincerely,

IN THE MATTER OF

MCP FOODS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2379. Complaint, April 11, 1973-Decision, April 11, 1973.*

Consent order requiring an Anaheim, California, manufacturer, seller and distributor of imitation orange juice, among other things, to cease disseminating any advertisements which misrepresent the composition or nutrient value of its products; failing to disclose that (1) its product contains artificial and nutritive sweeteners and (2) that its product is a frozen concentrate for imitation fruit juice.

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 MCP Foods, Inc., a corporation, the Mayne Agency, Inc., a corporation and Laurence W. Pendleton, individually and as an officer of the Mayne Agency, Inc., 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 it complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent MCP Foods, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 424 South Atchison Street, Anaheim, California.

Respondent the Mayne Agency, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 431 North Brand Boulevard, Glendale, California.

Respondent Laurence W. Pendleton is an officer of the Mayne Agency, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

PAR. 2. Respondent MCP Foods, Inc., is now, and for some time last past has been, engaged in the manufacture, sale, and distribution of a frozen concentrate for imitation orange juice with artificial and nutritive sweeteners added, designated "Orange C," which comes within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 3. Respondent the Mayne Agency, Inc., is now, and for some time last past has been, an advertising agency of MCP Foods, Inc., and respondents the Mayne Agency, Inc., and Laurence W. Pendleton now, and for some time last past, have, directly or through intermediaries, prepared and placed for publication and caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the hereinabove mentioned "Orange C" frozen concentrate.

PAR. 4. Respondent MCP Foods, Inc., causes the said product, when sold, to be transported from its place of business in one State of the United States to purchasers located in various other States of the United States. Respondent MCP Foods, Inc., main-

tains, and at all times mentioned herein has maintained, a course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 5. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said product 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 inserted in newspapers and other advertising media for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product; and have disseminated and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

a) Point of purchase advertising which states:

- 1) drink the NEW break-thru * * *
- 2) from Orange County California
- 3) Breakfast Energizer with Vitamin C plus Vitamin A
- 4) * * * nutritious way to start the day!
- 5) at breakfast or anytime Gives you extra Vitamins A and C
- 6) Provides isotonic salts for quick energy.

b) Newspaper advertisements which state:

- 1) a break-thru at breakfast and thru-out the day
- 2) A convenient frozen concentrate from fresh California oranges.
- 3) Gives you extra Vitamins A and C.
- 4) Provides isotonic salts for quick energy.
- 5) Costs less than orange juice.

c) The product name, variously stated in advertising and on cans containing the product as "Orange C," "Orange C Breakfast Energizer," and "Orange C Frozen Concentrate Breakfast Energizer."

PAR. 7. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

a) said product is frozen concentrated orange juice or a product containing substantially more than fifty percent orange juice in its reconstituted form.

b) isotonic salts contained in said product are a source of quick energy.

c) said product is a breakthrough in the breakfast beverage field.

d) said product contains proportionately more Vitamin C than frozen concentrated orange juice.

e) said product is other than a frozen concentrate for imitation orange juice with artificial and nutritive sweeteners added.

f) said product, as consumed, is as nutritious as, or more nutritious than, frozen concentrated orange juice, as consumed.

g) said product, as consumed, is a less expensive source of Vitamin C than frozen concentrated orange juice, as consumed.

h) said product is not one to which artificial sweetener has been added.

PAR. 8. In truth and in fact:

a) said product is not frozen concentrated orange juice nor is it a product containing substantially more than fifty percent orange juice in its reconstituted form.

b) isotonic salts contained in said product are not a source of quick energy.

c) said product is not a breakthrough in the breakfast beverage field. The only innovation involved is the addition of isotonic salts, which is of little or no significance to the ordinary consumer.

d) said product contains proportionately less Vitamin C than frozen concentrated orange juice.

e) said product is a frozen concentrate for imitation orange juice with artificial and nutritive sweeteners added.

f) said product, as consumed, is less nutritious than frozen concentrated orange juice, as consumed, as to all major nutrients except Vitamin A, and is essentially orange juice which has been diluted, colored, artificially and nutritively sweetened, and to which inorganic salts have been added.

g) said product, as consumed, is a more expensive source of Vitamin C than frozen concentrated orange juice, as consumed.

h) said product is one to which artificial sweetener has been added.

Therefore, the advertisements referred to in paragraph Six 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 state-

ments and representations set forth in Paragraph Six and Seven were, and are, false, misleading and deceptive.

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent MCP Foods, Inc., has been, and now is, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporation, firms, and individuals in the sale of food products of the same general kind and nature as that sold by said respondents.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents the Mayne Agency, Inc., and Laurence W. Pendleton have been, and now are, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with other advertising agencies and persons engaged in the advertising agency business.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent MCP Foods, Inc.'s product by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," 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 and deceptive acts and practices in commerce an unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Los Angeles 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 MCP Foods, 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 424 South Atchison Street, Anaheim, California.

Respondent the Mayne Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 431 North Brand Boulevard, Glendale, California.

Respondent Laurence W. Pendleton is an officer of the Mayne Agency, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

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

ORDER

I. *It is ordered*, That respondent MCP Foods, Inc., a corporation, its successors and assigns, and respondent the Mayne Agency, Inc., a corporation, its successors and assigns, and their officers, and respondent Laurence W. Pendleton, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any fruit flavored beverage, by whomsoever manu-

factured, other than single strength fruit juices, do forthwith cease and desist from:

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

(a) Isotonic salts contained in any such product are in any way nutritionally significant or that the product itself is "isotonic;"

(b) Any such product is a breakthrough in the breakfast beverage field;

(c) Any such product is a source of "energy," other than food energy, provided that it shall be clearly and conspicuously disclosed, in close connection with the term "food energy," that the said term is a reference to calories;

(d) Any such product is as nutritious as, or more nutritious than, the single strength fruit juice or juices from which its flavor is derived; Provided, however, That it shall be a defense hereunder for respondents to show that the said product actually has, in the form consumed, a greater content of each significant nutrient than the said fruit juice or juices;

(e) Any such product is a less expensive source of Vitamin C than the single strength fruit juice or juices from which its flavor is derived: *Provided, however,* That it shall be a defense hereunder for respondents to show that the average retail cost of a quantity of the said product, in the form consumed, containing a given quantity of Vitamin C is less than the average retail cost of a quantity of the said fruit juice or juices containing the said quantity of Vitamin C;

2. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, in which the words "Orange C" or words of similar import or meaning are used to describe any such food which, in its reconstituted or prepared form, contains less Vitamin C per unit weight or per unit volume than orange juice.

3. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the

Federal Trade Commission Act, which misrepresents, in any manner, directly or by implication:

- (a) the amount or percentage of natural fruit or natural fruit juice contained in any such product, or
- (b) the vitamin content or nutrient value of any such product, or
- (c) the similarity of any such product to the single strength fruit juice or juices from which its flavor is derived.

4. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraphs 1 or 2 or the misrepresentations prohibited in Paragraph 3, above.

II. *It is further ordered*, That respondent MCP Foods, Inc., a corporation, its successors and assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any product contains a concentration of Vitamin C, or any other nutrient, equal to or greater than the concentration of said nutrient found in single strength fruit juices, unless such product contains nutrients of equivalent or greater variety and in greater concentration than those found in significant amounts in the single strength fruit juice or juices with which it is directly or by implication compared.
2. Failing to disclose, clearly and conspicuously, that any such product contains artificial and nutritive sweeteners.
3. Failing, where any such product is a frozen concentrate for imitation fruit juice, clearly and conspicuously so to identify the product, *Provided, however*, That it shall be a defense hereunder if the product is advertised and labeled in accordance with any Federal law or regulation which may hereafter be promulgated.

III. *It is further ordered*, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission

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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 or corporation, the creation or dissolution 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 of this order upon them, file with the Commission a report in writing, signed by said respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF
PEPSICO, INC.

Docket 8903. Order, April 12, 1973.

Order establishing an expedited time schedule to provide that all administrative proceedings, including the Commission's final decision, would be concluded by September 10, 1973.

ORDER

On April 3, 1973, the United States Court of Appeals for the Second Circuit rendered its decision denying the Commission's application for an injunction pursuant to the All Writs Act. The injunction was denied on the condition that the parties enter into a hold-separate agreement as directed by the court, pending completion of the expedited administrative proceedings. The Commission had advised the court that it would establish an expedited time schedule to provide that all administrative proceedings, including the Commission's final decision, would be concluded by September 10, 1973.

Now therefore it is ordered, That all proceedings before the administrative law judge, including the filing of his initial decision shall be concluded by July 23, 1973. The administrative law judge shall determine how much time shall be allocated for prehearing proceedings and for the reception of the evidence, and how much time shall be allocated for preparing and filing his initial decision, so that his initial decision shall be filed by July 23, 1973.

It is further ordered, That in the event either or both parties shall file a notice of intention to appeal the initial decision, the following briefing schedule shall govern: The parties shall submit their respective briefs on or before August 10, 1973, and

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their answering briefs, if any, on or before August 20, 1973, at which date oral argument shall be heard on the matter.

IN THE MATTER OF

ACS INDUSTRIES, INC., ET AL.

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

Docket C-2380. Complaint, April 13, 1973—Decision, April 13, 1973.

Consent order requiring a Woonsocket, R. I., 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 ACS Industries, Inc., a corporation, and George Botvin, 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 ACS Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma. Respondent George Botvin 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 22nd & D Streets, N.W., Miami, Oklahoma.

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 com-

merce, 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 style "1200," 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 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 ACS Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island. Respondent George Botvin is an officer of the corporation. He formulates, directs and controls the acts and practices and policies of the said corporation.

Respondent corporation is engaged in the manufacture and sale of carpets and rugs. Its office and principal place of business is located at 71 Villanova Street, Woonsocket, Rhode Island.

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 ACS Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent George Botvin, 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 the 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 February 10, 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

AMERICAN CYANAMID COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 7 OF THE CLAYTON ACT, AS AMENDED

Docket C-2381. Complaint, April 16, 1973—Decision, April 16, 1973.

Consent order requiring the nation's 102nd largest industrial corporation located at Wayne, New Jersey, among other things to divest two toiletry product lines acquired from Shulton, Inc., and a plant located at Moosic, Pennsylvania; and imposing a ten year ban on the acquisition of firms which manufacture or distribute more than \$1 million worth of toilet preparations annually.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Cyanamid Company, a corporation, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) through the acquisition of the stock and assets of Shulton, Inc., a corporation, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (U.S.C. Title 15, Section 21) stating its charges in this respect as follows:

I

DEFINITIONS

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

(a) "Men's fragrance products" means all after shave lotions, colognes, toilet waters and all purpose lotions regularly promoted for use by men which consist mostly of a solution of perfume, alcohol and water in varying amounts.

(b) "Direct sale market" means the domestic sale of men's fragrance products to the end user by use of door-to-door sellers.

(c) "Resale market" means the domestic sale of men's fragrance products to resellers such as, but not limited to, wholesale distributors, mass merchandisers, department stores, food stores, drug stores and specialty stores.

(d) "Total men's fragrance product market" means the domestic sale of men's fragrance products in the direct sale market and in the resale market combined.

II

RESPONDENT

2. Respondent, American Cyanamid Company, sometimes

hereinafter referred to as "Cyanamid," is, and has been, at least since approximately April 15, 1971, a corporation organized, existing and doing business under the laws of the State of Maine, with its office and principal place of business located at Wayne, New Jersey.

3. In calendar 1970, the last full calendar year prior to the subject merger, Cyanamid had net sales of \$1,158,440,000 and was the 102nd largest industrial corporation in the United States. In 1970, year end total assets amounted to \$1,065,923,000, placing respondent 101st in asset valuation in the United States. In 1970, Cyanamid spent approximately \$46 million for research and development.

4. Cyanamid is engaged in four major areas of operation. In 1970, these major segments were chemicals, which accounted for 32 percent of sales, building and consumer products contributing 27 percent, medical products which includes the well known line of Lederle pharmaceuticals and biologicals made up 21 percent of sales, and the agricultural products group which accounted for 20 percent of sales.

5. Cyanamid entered the hair-care products market in 1963 with the acquisition of John H. Breck, Inc., (hereafter "Breck"). In the full calendar year prior to the merger, Breck had total sales of over \$29 million. By 1970 the Breck division's domestic sales had more than doubled.

6. Breck has become one of the leaders in the hair care product market with such successful products as Breck's line of shampoos for dry, normal and oily hair, Breck Satin and Breck Basic hair texturizers, Breck Creme Rinse, Miss Breck hair sprays, and a line of Breck hair color products.

7. Cyanamid has been highly successful in achieving and maintaining brand loyalty toward its Breck hair care product group and other consumer advertised products through the use of extensive advertising and promotion. Total advertising expenditures for 1970 were over \$46 million in the United States. In 1970 over \$11 million was expended to advertise the Breck line.

8. Cyanamid markets its hair care products through its own national sales organization supplemented in some instances by the use of brokers. Cyanamid's sales organization and brokers sold the Breck products to drug chains, drug wholesalers, independent drug stores, grocery chains and wholesalers, department stores, and mass merchandise outlets.

9. In the course and conduct of its business, Cyanamid is, and has been, at least since approximately April 15, 1971, engaged in selling its products to purchasers in various States

of the United States, and has caused such products, when sold, to be transported from its facilities in various States of the United States to such purchasers located in various other States of the United States. In so doing Cyanamid is engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged at least since approximately April 15, 1971.

III

THE ACQUIRED CORPORATION

10. Prior to and until approximately April 15, 1971, Shulton, Inc., sometimes hereinafter referred to as "Shulton," was a corporation organized, existing and doing business under the laws of the State of New Jersey with its office and principal place of business located at Clifton, New Jersey.

11. Shulton was engaged principally in the manufacture and sale of a broad range of men's fragrance products, and other men's toiletries, women's cosmetics, toiletries and perfumes, hospital and medical supplies, and aromatic and electronic chemicals.

12. In 1970, Shulton had net sales of \$104,024,000. Assets in 1970 amounted to approximately \$89,286,000. In 1970 domestic sales of cosmetics and toiletries were approximately \$60,152,000. Product research and development for 1970 was approximately \$1,100,000.

13. Shulton, in 1970, was a leading company manufacturing and selling men's fragrance products. Shulton had over \$17 million in sales of such products.

14. Shulton has used extensive advertising to achieve and maintain brand allegiance toward its men's fragrance products. In 1970, Shulton spent over \$6 million for advertising in the United States. For 1970, national media advertising expenditures for Shulton's men's fragrance products, were approximately \$2.5 million, with approximately \$1.7 million devoted to network and spot television advertising.

15. Shulton marketed its men's fragrance products through its own national sales organization of approximately 140 salesmen, supplemented in some instances by the use of brokers. Shulton's sales organization sold on a direct basis to department stores, drug chains, drug retailers, drug wholesalers, grocery wholesalers, mass merchandise outlets, supermarkets and a variety of specialty outlets.

16. In the course and conduct of its business prior to approximately April 15, 1971, Shulton sold its products to purchasers

located in various States of the United States and caused such products, when sold, to be transported from its facilities in New Jersey, Pennsylvania and Tennessee to such purchasers located in various other States of the United States. In so doing Shulton was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

IV

THE MERGER

17. On or about April 15, 1971, by virtue of a Plan of Merger and Agreement and Plan of Reorganization dated February 8, 1971, Cyanamid acquired all the stock and assets of Shulton via an exchange of stock, pursuant to which holders of Shulton's common stock received 96/100th of a share of Cyanamid common stock for each share of Shulton's common stock and holders of Shulton's preferred stock received three shares of Cyanamid common stock for each share of Shulton's preferred stock.

18. The value of the consideration received by Shulton stockholders amounted to approximately \$106,498,200.

V

THE NATURE OF TRADE AND COMMERCE

19. In factory dollars, industry sales in the total men's fragrance product market in 1970 were approximately \$173 million. Industry sales in the resale market for 1970 were approximately \$126 million and in the direct sale market were approximately \$47 million.

20. Shulton markets and sells its men's fragrance products in the resale market, where it was the leading company with more than 14 percent of the resale market. In the total men's fragrance product market Shulton's sales accounted for over 10 percent of the market.

21. The sales of the top four and eight largest firms in 1970, accounted for approximately 50 percent and 75 percent, respectively, of the resale market. In the total men's fragrance product market, the sales of the top four and eight largest firms accounted for approximately 54 percent and 76 percent, respectively, in 1970.

22. Men's fragrance products as with other men's and women's toiletries are generally pre-sold to the consumer through extensive advertising and promotion. These products are also sold through distribution channels similar to those through which women's toiletries are sold.

23. A firm which possesses significant capabilities in marketing, manufacturing and advertising a line of women's toiletries has the capability of internally entering the men's toiletry field.

VI

ADVERSE COMPETITIVE EFFECTS

24. The effect of the acquisition by Cyanamid of the stock and assets of Shulton may be substantially to lessen competition or to tend to create a monopoly in the total men's fragrance product market, or in the resale market in the United States as a whole in the following ways, among others:

(a) Shulton has been eliminated as an independent competitive factor.

(b) Cyanamid has been permanently eliminated as a potential entrant through internal expansion.

(c) The position of a substantial competitive factor has been enhanced to the detriment of actual and potential competition.

(d) The combination of Cyanamid and Shulton tends unduly to increase barriers to entry and to deprive smaller companies of a fair opportunity to compete.

VII

THE NATURE OF THE VIOLATION

25. The acquisition by American Cyanamid Company of the stock and assets of Shulton, Inc., together with the effects thereof as hereinbefore alleged, constitutes a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18), as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law

has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said 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 American Cyanamid Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at Wayne, New Jersey.

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

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

1. *Toilet preparations* - shall mean those products listed in Standard Industrial Classification (SIC) Product Code Nos. 28441, 28442, 28443 and 28445 as described on pages 28D-16 and 28D-17 of the 1967 Census of Manufacturers, Volume II - Industry Statistics, Part 2, Major Group 25-33, as prepared by the Bureau of Census, U. S. Department of Commerce.

2. *Burley product line* - shall mean those after shave lotions, colognes, bronzers, body talcums, stick and aerosol deodorants, shave creams and shower soaps manufactured and distributed by Shulton, Inc. which bear the Burley trademark.

3. *Man-Power product line* - shall mean those deodorants, antiperspirants and shave creams manufactured and distributed by Shulton, Inc. which bear the Man-Power trademark.

I

It is ordered, That respondent, American Cyanamid Company, its officers, directors, agents, representatives, employees, and its successors and assigns shall, within eighteen (18) months from the effective date of this order, divest itself absolutely and in good faith, of all assets, properties, rights and privileges

and interests of whatever nature, tangible and intangible, comprising both the Burley and Man-Power product lines of men's toiletries, including but not limited to all inventories, formulations, patents, trade names, trademarks, contract rights and good will, and also including a plant located in Moosic, Pennsylvania, together with equipment to be installed therein by respondent as is required to manufacture the Burley and Man-Power product lines of men's toiletries, to a buyer approved by the Federal Trade Commission: *Provided, however*, That if a buyer willing to purchase both the Burley and Man-Power product lines of men's toiletries is otherwise acceptable to the Federal Trade Commission, but does not wish to purchase the aforesaid plant located in Moosic, Pennsylvania, or, desiring to purchase said plant, does not wish any or all equipment to be installed therein as is required to manufacture the Burley and Man-Power product lines of men's toiletries, the Federal Trade Commission may in its sole discretion require the divestiture and approve the sale of the plant in its present condition to some other acceptable purchaser or, if the buyer willing to purchase both the Burley and Man-Power product lines of men's toiletries also desires to purchase said plant, approve the installation of equipment therein to the extent desired by such purchaser; *And provided further*, That respondent shall not be required to divest itself of the names Shulton and Old Spice, the Old Spice fragrances, the Old Spice ship designs and rights to the shape of the containers used for Old Spice men's toiletry products; *And provided further*, That any purchaser of the Burley and Man-Power product lines of men's toiletries shall agree that, after a reasonable period of time after the date of purchase to provide for the sale of inventory produced prior to purchase, it will discontinue the use of the names Shulton and Old Spice, the Old Spice ship designs and containers of the shape used for Old Spice men's toiletry products, *And provided further*, That if divestiture has not been effected within said eighteen-month period, the Federal Trade Commission shall grant to respondent the right to petition the Commission before issuing further order or orders which may be deemed appropriate.

II

It is further ordered, That, if respondent is unable to sell or dispose of the assets, required to be divested by Part I of this order, for cash, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith

any security interest therein, not to exceed five years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which said assets are sold; *Provided, however,* That if after good faith divestiture pursuant to this order, any buyer fails to perform his obligations and respondent regains ownership or control of any of said assets by enforcement of any security interest therein, respondent shall redinvest said assets within eighteen (18) months in the same manner as provided for herein.

III

It is further ordered, That pending divestiture respondent shall use its best efforts to advertise, merchandise, promote, distribute and sell the Burley and Man-Power product lines and shall continue to expend money to promote and advertise said product lines in substantially the same amount and rate as that which it has expended to promote and advertise said product lines in 1972. Further, respondent shall not make any changes in the assets of the Burley and Man-Power products lines which may impair the capacity of a buyer to merchandise and promote the Burley and Man-Power product lines as viable product lines in the men's toiletry industry.

IV

It is further ordered, That the divestiture required by Paragraph I of this order shall be effected, directly or indirectly, to anyone who, subsequent to such divestiture, is an officer, director, employee, or agent of, or otherwise under the control or influence of respondent, or who owns or controls, directly or indirectly, more than one (1) per cent of the outstanding stock of respondent.

V

It is further ordered, That for a period of ten (10) years from the date of this order, respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, and assets (other than products purchased in the ordinary course of business including, but not limited to, machinery, equipment and supplies) of any corporation, partnership or natural person (1) which is engaged in the manufacture and distribution of toilet preparations in the United States, or (2) which is engaged in the distribution of its own brands

of toilet preparations in the United States that are manufactured by others, or (3) which is engaged in the manufacture in the United States of toilet preparations for distribution by others in the United States; *Provided, however,* That the provisions of this Paragraph V shall not apply to the acquisition of stock, share capital and assets of any corporation, partnership and person whose sales of toilet preparations in the United States did not exceed an average of \$1 million per year in the three years preceding the acquisition.

VI

It is further ordered, That respondent shall, within sixty (60) days after the effective date of this order, and every six (6) months thereafter, until respondent has fully complied with Paragraph I of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with Paragraph I of this order. All compliance reports shall include, in addition to such other information and documentation as may hereafter be required, to show compliance with this order, a summary of all contacts and negotiations with prospective buyers concerning purchase of the specified assets and properties, the identity of all such parties, and copies of all written communications to and from such parties.

With respect to Paragraph V of this order, respondent shall, on the first anniversary date of the date of this order and on each anniversary date thereafter to and including the tenth anniversary date of this order, submit a report, in writing, listing all acquisitions or mergers made by it in the three (3) categories described in said Paragraph V, the date of each such acquisition or merger, the products involved and such additional information relating thereto as may from time to time be required.

VII

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