3. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation 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.

4. Retain all receipts required to be obtained by this order for a period of five (5) years from the date of each said receipt.

IN THE MATTER OF

McDONALD'S CORPORATION, ET AL.–DOCKET C–1897 D'ARCY ADVERTISING COMPANY, ET AL.–DOCKET C–1898

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

Complaints, April 12, 1971—Dismissal order, June 5, 1973.

Order reopening proceedings, vacating and setting aside orders to cease and desist, 78 F.T.C. 606 and 616 (36 F.R. 11,289 and 11,284) and dismissing proceedings against a major chain of hamburger restaurants and its advertising agency which charged them with unfair methods of competition and unfair and deceptive acts and practices in their use of a "sweepstakes" sales promotion device.

SEPARATE CONCURRING STATEMENT OF COMMISSIONERS PAUL RAND DIXON AND MARY GARDINER JONES

Although we dissented from the Commission's dismissal of the complaint in *D. L. Blair Corp.*, we agree that because there is an identity of interest in the two matters before us and *D. L. Blair Corp.*, fairness requires that the order be set aside as to respondents herein. We therefore, concur that the proceedings herein be vacated and set aside, and that the proceedings be dismissed.

ORDER REOPENING PROCEEDINGS, SETTING ASIDE CEASE AND DESIST ORDERS AND RULING ON PETITION TO STAY

McDonald's Corporation and McDonald's System, Inc., by a petition filed on March 26, 1973, and D'Arcy-MacManus & Masius, Inc., successor to D'Arcy Advertising Company by a petition filed on March 29, 1973, request, pursuant to Rule 3.72(b)(2) of the

Commission's Rules of Practice, that the Commission reopen these proceedings and set aside the orders to cease and desist against them which have become final [78 F.T.C. 606 and 616 for the respective cases].

Respondent D'Arcy-MacManus & Masius, Inc., has also filed a petition to stay all further requests for compliance reports pending the Commission's consideration of its petition.

The Acting Director of the Bureau of Consumer Protection and complaint counsel have filed answers to the petitions to reopen. In the answers, it is stated that complaint counsel joins with respondents in urging that the orders to cease and desist be set aside by the Commission.

The two cases have been consolidated by the Commission for the purpose of ruling on the petitions. The basis for the requests to reopen the proceedings and set aside the cease and desist orders is the Commission's action in *D. L. Blair Corp.*, 3 Trade Reg. Rep. ¶20,223 (D. 8837, 1973). There, the Commission after the hearing and initial decision by the administrative law judge, concluded that the facts did not demonstrate a violation of Section 5 of the Federal Trade Commission Act. Respondents in the instant proceedings were participants in the same activities involved in the *D. L. Blair Corp.*, matter and were initially named in the complaint. The respondents, however, instead of litigating the allegations in the complaint signed consent agreements which resulted in the cease and desist orders.

In view of the decision in the *D. L. Blair Corp.* matter and the identity of the facts as they relate to respondents, it is determined by the Commission that it is not in the public interest to continue the orders here. Accordingly,

It is ordered, That the proceedings be, and they hereby are, reopened and the orders to cease and desist heretofore entered in these matters be, and they hereby are, vacated and set aside and the proceedings be, and they hereby are, dismissed.

It is further ordered, That the petition by respondent D'Arcy-MacManus & Masius, Inc., to stay any further requests to file compliance reports is dismissed as moot.

Commissioners Dixon and Jones submitting a concurring statement.

IN THE MATTER OF

THE PAPERCRAFT CORPORATION

MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 8779. Complaint, April 10, 1969—Modified order, June 6, 1973.

Order modifying an earlier order dated June 30, 1971, 36 F.R. 15662, 78 F.T.C. 1352, as modified September 9, 1971, 79 F.T.C. 420, which required a major manufacturer and distributor of gift wrapping paper and ribbons with headquarters in Pittsburgh, Pa., to divest itself of an acquired gift wrapping firm, by deleting Paragraph IX of the modified order which prohibited the divesting company from selling to any direct customers of the divested company for a three-year period.

MODIFIED ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Seventh Circuit a petition to review the order to cease and desist issued herein on June 30, 1971, and modified by the Commission on September 9, 1971; [79 F.T.C. 420] and [78 F.T.C. 1352] the Court on January 25, 1973, having rendered its decision, and on February 22, 1973, having entered its final order affirming and enforcing the Commission's order with modification by the deletion of Paragraph IX; and the time in which to file a petition for certiorari having expired without either party having filed such a petition;

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

I

It is ordered, That respondent, the Papercraft Corporation, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within six (6) months from the date of service upon it of this order, shall divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and goodwill, acquired by the Papercraft Corporation as a result of its acquisition of CPS Industries, Inc., together with all additions and improvements thereto, of whatever description, made since the acquisition.

II

It is further ordered, That none of the assets, properties, rights or privileges described in Paragraph I of this order shall by such divestiture be transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of the Papercraft Corporation, or to anyone who is not approved in advance by the Federal Trade Commission.

III

If respondent divests the assets, properties, rights and privileges, described in Paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by the Papercraft Corporation, and if respondent then distributes all of the stock in said corporation or corporations to the stockholders of the Papercraft Corporation, in proportion to their holdings of the Papercraft Corporation stock, then Paragraph II of this order shall be inapplicable, and the following Paragraphs IV and V shall take force and effect in its stead.

IV

No person who is an officer, director, or executive employee of the Papercraft Corporation, or who owns or controls, directly or indirectly, more than one (1) percent of the stock of the Papercraft Corporation, shall be an officer, director or executive employee of any new corporation or corporations described in Paragraph III, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation or corporations described in Paragraph III.

V

Any person who must sell or dispose of a stock interest in the Papercraft Corporation or the new corporation or corporations, described in Paragraph III, in order to comply with Paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of the Papercraft Corporation.

VI

It is further ordered, That no method, plan or agreement of divestiture to comply with this order shall be adopted or implemented by respondent save upon such terms and conditions as shall first be approved by the Federal Trade Commission.

VII

It is further ordered, That pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the company to be divested which may impair its present capacity or market value, unless such capacity or value is restored prior to divestiture.

VIII

It is further ordered, That for a period of ten (10) years from the date of service of this order upon it respondent shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the manufacture, production, sale or distribution of any decorative gift wrap product, nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern.

IX

As used in this order, the acquisition of assets includes any arrangement by the Papercraft Corporation with any other party, pursuant to which such other party discontinues manufacturing any of the products described in Paragraph VIII of this order under a brand name or label owned by such other party and thereafter distributes any of said products under any of Papercraft's brand names or labels.

X

As used in this order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

Docket 8907. June 7, 1973.

F.T.C. "Commission" authorizing and requesting the Consul or Vice-Consul of the United States in Frankfurt, Federal Republic of Germany (or legal designate) to administer the oath or affirmation to certain employees, German nationals, of a German subsidiary of General Motors Corporation necessary to take their depositions and to preside at the taking of deposition upon oral examination.

IN THE MATTER OF THE DEPOSITIONS OF W. SCHINDLER, W. SCHMIDT-BRUCKEN AND DR. K. BUDDE, CITIZENS OF THE FEDERAL REPUBLIC OF GERMANY

COMMISSION

To all to whom these presents may come, greeting:

Whereas, The depositions of W. Schindler, W. Schmidt-Brucken, and Dr. K. Budde, all of whom are employees of Adam Opel AG, Russelheim, Germany, a subsidiary of General Motors Corporation, have been authorized by Order of Administrative Law Judge Ernest G. Barnes for use in the matter of General Motors Corporation, et al, Docket No. 8907; and

Whereas, It appears that the proposed witnesses are German nationals residing in the Federal Republic of Germany;

Now, therefore, The Federal Trade Commission authorizes and requests the Consul or Vice-Consul of the United States in Frankfurt, Federal Republic of Germany, (or their designate authorized by the law thereof or by the law of the United States to administer oaths and affirmations) to administer the oath or affirmation to these individuals necessary to take their depositions and to preside at the taking of the deposition upon oral examination.

By direction of the Federal Trade Commission.

IN THE MATTER OF

FELCO SPORTS PRODUCTS, INC., ET AL.

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

Docket C-2413. Complaint, June 8, 1973—Decision, June 8, 1973.

Consent order requiring three affiliated manufacturers of athletic and recreational apparel in New York City, and Hatillo, Puerto Rico, among other things to cease misrepresenting the fiber content of their products and to run a retraction in their catalogs concerning the garments that were deceptively advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, Hatillo Apparel Corporation, a corporation and Nathan Katz, individually and as an officer of said corporations hereinafter sometimes referred to as respondents have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Felco Sports Products, Inc., a corporation, and Felco Athletic Wear Company, Inc., a corporation, are organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Hatillo Apparel Corporation, a corporation, is organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico.

Respondent Nathan Katz is an officer of the corporate respondents. He formulates, directs and controls the acts, practices and policies of the said corporate respondents including those hereinafter set forth.

Respondents Felco Sports Products, Inc., and Felco Athletic Wear Company, Inc., are manufacturers of athletic and recreational apparel with their office and principal place of business located at 113–119 Fourth Avenue, New York, New York. Respondent Hatillo Apparel Corporation, is a manufacturer of athletic and recreational apparel with its office and principal place of business located in Hatillo, Puerto Rico.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale in

commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of such textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were Bermuda softball pants which were not labeled to show:

(1) The true generic name of the fibers present; and

(2) The true percentage of the fibers present by weight.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects.

1. Samples, swatches and specimens used to promote or effect sales of respondents' garments were not labeled to show information required by Section 4(b) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid rules and regulations.

2. The fiber content of linings, fillings and paddings incorporated in jackets for warmth rather than for structural purposes were not set forth separately and distinctly, in violation of Rule 22 of the aforesaid rules and regulations.

PAR. 5. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 6. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were boys' jackets stamped, tagged, labeled or otherwise identified by respondents as "100% reprocessed wool body," whereas in truth and in fact, said products contained substantially different fibers and amounts of fiber than represented.

PAR. 7. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

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

PAR. 8. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 9. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale, and distribution of certain products, namely boys' jackets in commerce. In the course and conduct of their business, respondents now cause, and for some time last past have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain and at all times mentioned herein, have maintained, a substantial course of trade in said products in

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

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the sale of their said products, namely boys' jackets, respondents have made certain statements in Felco's 1972 sales catalogue, No. 89 relative to the fiber content composition of the said jackets.

Among such statements in the Felco sales catalogue No. 89, are "all wool melton jackets" and "full wool quilted lined sleeves and body."

PAR. 11. By the use of the aforesaid statements the respondents represent, and have represented, directly that said jackets were composed entirely of "wool," whereas in truth and in fact, said products were not composed entirely of wool, but contained substantially different fibers and amounts of fibers than represented. In addition, the use of the aforementioned statements in respondents' catalogue No. 89 implied that the wool used in the advertised product was new wool while in fact such wool was reprocessed.

PAR. 12. The acts and practices of respondents as set forth in Paragraphs Ten and Eleven above, have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, 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 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, the Textile Fiber Products Identification Act, as amended and the Wool Products Labeling Act, as amended; and

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

sion 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 Felco Sports Products, Inc., and Felco Athletic Wear Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Hatillo Apparel Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico.

Respondent Nathan Katz, is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations.

Respondents Felco Sports Products, Inc., and Felco Athletic Wear Company, Inc., are manufacturers of wool and textile products with their office and principal place of business located at 113–119 Fourth Avenue, New York, New York. Respondent Hatillo Apparel Corporation, is a manufacturer of athletic and recreational apparel with its office and principal place of business located in Hatillo, Puerto Rico.

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 Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, and Hatillo Apparel Corporation, a corporation, their successors and assigns, and their officers, and Nathan Katz, individually and

as an officer of said corporations, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile product, which has been advertised or offered for sale in commerce; and in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to affix labels showing the respective fiber content and other required information to samples, swatches or specimens of textile fiber products subject to the aforementioned Act which are used to promote or effect sales of such textile fiber products.

3. Failing to set forth separately and distinctly the fiber content of any linings, interlinings, fillings or paddings if incorporated in the textile fiber products for warmth rather than for structural purposes, or if any express or implied representations are made as to their fiber content.

B. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

It is further ordered, That respondents Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, Hatillo Apparel Corporation, a corporation their successors and assigns, and their officers, and Nathan Katz, individually and as an officer of said corporations, and respondents' representa-

tives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

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

It is further ordered, That respondents Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, Hatillo Apparel Corporation, a corporation, their successors and assigns, and their officers, and Nathan Katz, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of coats, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from falsely and deceptively advertising or misrepresenting in any manner, or by any means the character or amount of constituent fibers contained in such products.

It is further ordered, That respondents shall publish in their catalogs distributed over the twelve-month period from the effective date of this order a retraction on the same pages, or in the same portions of the catalogs as will appear the textile fiber products previously deceptively advertised in the catalogs, or if the previously deceptively advertised textile fiber products do not appear in said catalogs then the retraction shall appear on the same pages or in the same portions of the catalogs as are advertised similar products as that of the previously deceptively advertised textile fiber products, or if no similar products are advertised then in a part or portion of the catalogs of at least equal prominence to the part or section of the catalogs where the deceptively advertised textile fiber products had been previously deceptively adver-

tised, in print of equal size and prominence as that of the original false, misleading and deceptive advertisements; and said retraction shall include a statement that identifies the deceptively advertised fiber products, sets forth that these fiber products were previously misleading and deceptively advertised by the respondents as all wool or as all wool melton, and accurately describes what the true fiber content of these products were at the time they were misleadingly and deceptively advertised.

It is further ordered, That respondents shall send by registered mail a copy of this order to each of their customers who have purchased any of the above misleadingly and deceptively advertised fiber products during the three year period 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 affect compliance obligations arising out of this order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their 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 address and a statement as to 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 respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THE HEARST CORPORATION, ET AL.

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

Docket 8832. Complaint, January 15, 1971—Decision, June 19, 1973.*

* Complaint reported on page 218 herein.

Consent order requiring a New York City magazine subscription firm and its wholly-owned subsidiary located in Sandusky, Ohio, among other things to cease misrepresenting the purpose of the call or solicitation; misrepresenting the consumers or class of consumers afforded the opportunity of purchasing respondent's products or services; representing that any merchandise or service is free or that any merchandise is available for a price less than customary or regular; misrepresenting the savings accorded purchasers; failing to cancel subscriptions when representations have been made that said subscriptions are cancellable; misrepresenting the terms or conditions of payments; misrepresenting the nature, kind or legal characteristics of any document; attempting to harass or intimidate customers allegedly delinquent in their payments; failing to inform customers of their right to cancel their contract within three business days; misrepresenting respondent's intention to institute legal proceedings; failing to disclose to customers certain information regarding credit transactions; and furnishing means and instrumentalities of misrepresentation or deception. Respondents are further ordered to cease making sales solicitations through third parties who do not agree to be bound by the order; dealing with any who continue on their own the prohibited practices; and must institute a program of continuing surveillance to determine dealer compliance.

DECISION AND ORDER

The Commission having issued its complaint on May 27, 1970, charging the consenting parties named in the caption hereof with violation of the Federal Trade Commission Act; and the consenting parties having been served with a copy of the complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver of the provisions of Section 2.34(d) of its rules which provides that the consent order procedure shall not be available after issuance of complaint; and

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

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same,

and the agreement containing consent order having 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 makes the following jurisdictional findings, and enters the following order:

1. The Hearst Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 959 Eighth Avenue, in the city of New York, State of New York.

Periodical Publishers' Service Bureau, 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 One North Superior Street, in the city of Sandusky, State of Ohio.

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

ORDER

I

It is ordered, That the Hearst Corporation, a corporation, and Periodical Publishers' Service Bureau, Inc., a corporation, consenting parties herein, their successors or assigns, and said consenting parties' respective officers, representatives, employees, salesmen, agents or solicitors, licensees or franchisees, as each, directly or through any corporate device may from time to time be engaged in connection with the advertising, offering for sale or sale of magazine subscriptions, or a combination of magazine subscriptions and a book or books (hereinafter sometimes referred to as products or servies) to consumers (as "consumer" is hereinafter defined) by subscriptions to purchase such products or services through a "paid-during-service" plan, or through a "cash sale" plan (as "paid-during-service" and "cash sale" are hereinafter defined), or in the collection of any delinquent paid-during-service or cash sale subscription account, obtained through door-to-door mail or telephone solicitation, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that a consenting party is primarily engaged in conducting a survey, quiz or contest, or any other activity other than the soliciting of a

paid-during-service plan or a cash sale plan; or misrepresenting in any manner the purpose of the solicitation.

2. Representing, directly or indirectly, that any offering of either the paid-during-service or cash sale plan is being made only to specially selected consumers by a consenting party unless such is a fact; or misrepresenting, in any manner, the consumers or class of consumers being offered the opportunity to purchase said plans.

3. Representing, directly or indirectly, that any parts or components of either plan are free or without cost, or are provided as a gift(s) to either the consumer, or a person or persons designated by such consumer, or without cost or charge in connection with the purchase of either plan unless the stated price of the parts and/or components required to be purchased in order to obtain such free part(s) or gift(s) is the same or less than the customary and usual price at which such parts and/or components required to be purchased have been sold separately from such free part(s) or gift(s), and in the same combination if more than the said parts or components are required to be purchased for a substantial period of time, in the consenting parties' recent and regular course of business in the area in which the offering is made; provided that nothing herein shall prevent the offering of "split orders" as part of the offer of either plan, pursuant to which the consumer designates and/or selects one or more of the magazine subscriptions in either plan to be directed and sent to a third-party consumer, without such third-party consumer paying any part of the price or cost of the plan.

4. Representing, directly or indirectly, that the price or cost of either plan covers only the cost of mailing, handling, editing, printing or any other element of the cost, or is at or below such element of cost; or that any price is a special or reduced price unless it constitutes a significant reduction from the consenting parties' established selling price at which such products or services have been sold in substantial quantities for the offering in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to the consumer; however, nothing herein shall prohibit the making of truthful comparisons with newsstand or other prices.

5. Refusing or failing, upon request, to cancel or terminate a consumer's paid-during-service plan if it has been repre-

sented, directly or indirectly, that such plan is cancellable at any time.

6. Representing, directly or indirectly, that the paid-during-service plan cannot be cancelled on the ground that the subscriptions in the agreement have been forwarded to the publishers of the selected magazines and that there is a financial commitment to such publishers for the term of the subscriptions; or refusing to cancel a consumer's agreement for future payments for any other deceptive reasons.

7. Failing, clearly, at the time of initial consumer sales contact and at each subsequent consumer sales contact up to verification, either in person or by telephone, to disclose at the outset thereof, either orally or in writing, and after the initial greeting, the name of the individual representative, the applicable consenting party's name, its local town location, that the purpose of such sales contact is to offer for sale the paid-during-service and/or cash sale plan; or misrepresenting, directly or indirectly, the purpose of any contact with a prospective consumer.

8. Making any reference or statement concerning "50 cents a week," "60 months," or any other statement as to the sum of money or duration or period of time in connection with a solicitation for a paid-during-service plan which plan does not in fact provide, at the option of the consumer, for the payment of the stated sum at the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, methods, rate or time of payment actually made available to the consumer.

9. Representing, directly or indirectly, that the contract or agreement to purchase the plan is only a "preference list," "guarantee," or "route slip," or any kind of document other than a contract or agreement; or misrepresenting in any manner the nature, kind or import of any document purporting to bind the consumer: *Provided, however,* That when such contract or agreement includes a guarantee of service to the consumer, nothing shall prohibit reference to such guarantee in a form such as "agreement and guarantee" or "contract and guarantee."

10. Failing, clearly, to reveal orally and in writing to each consumer before the signing of any agreement for either the paid-during-service or cash sale plan, that the document to be

signed by the consumer will become, after three (3) business days, binding on the consumer.

11. Harassing consumers who are allegedly delinquent in their payments due, pursuant to the sale of either a paid-during-service or cash sale plan, through repeated daily telephone contacts, or telephone contacts at unreasonable hours, or by use of abusive language, or by improperly contacting third parties and disseminating defamatory information about such consumers to such parties, or by any other similar means.

12. Representing, directly or indirectly, in the event of alleged nonpayment or alleged delinquency by a consumer arising out of his alleged purchase of either a paid-during-service or cash sale plan, that such consumer's general or public credit rating may be adversely affected, unless the information concerning the consumer's alleged delinquency or alleged nonpayment is referred to a bona fide credit agency.

13. Failing, clearly, in the event any reference is made to referral to a collection agency of the consumer's account, arising out of the sale of either a paid-during-service or cash sale plan, or of a contact from a collection agency, to disclose in each such contact that such collection agency is an operating division of the applicable consenting party, if such is the fact; or representing that such collection agency is an independent bona fide collection agency unless such is the fact.

14. Representing that legal action may be instituted, unless there is a good-faith intention to institute legal action against each alleged delinquent consumer to whom such representation is made; or misrepresenting, in any manner, the action or results of any action which may be taken to effect payment of such debt; provided that nothing herein contained shall preclude the right of the applicable consenting party to retain counsel and to utilize the services of counsel to protect its interest and such counsel shall not in any respect be prohibited from collecting amounts due from consumers.

15. Failing, in connection with the allowing of a consumer to sign an agreement for the purchase of the products and services described herein, to provide, both orally and in writing, as part of such agreement, a statement that the consumer may cancel such agreement within three (3) business days by directing and mailing postpaid a notice of intent to cancel, in

any form, including the return of the agreement, to the consenting party's address set forth on such agreement.

16. Failing to furnish each consumer, at the time of his signing of the agreement to purchase either a paid-during-service or cash sale plan of a consenting party, a duplicate of the original of the agreement setting forth the names of the magazines being subscribed to and the total cost to the consumer, and at the same time failing to furnish such consumer, either as a part of said agreement or separately, with a document setting forth the number of issues of each magazine per year and the respective price of each magazine subscription contained in the agreement.

17. Failing, in the event a coupon book is used, after the paid-during-service plan ordered has been orally verified with the consumer as to the months of service, selection of magazines and the payment program, to use a coupon book containing the number of coupons in the amounts called for in the duplicate original agreement provided to the consumer in accordance with Paragraph 16 hereof, which coupon book shall contain:

(a) on an inside cover, or other conspicuous place, a statement setting forth the number of coupons, the amount of each coupon, and the total amount represented by coupons; and

(b) a legend asking the consumer to verify the number of coupons against said consumer's original agreement.

18. Failing, after verification (as defined in Paragraph 17 hereof), in the event any magazine subscription set forth in the original plan agreement (provided the consumer in accordance with Paragraph 16 hereof) is changed or altered for any reason, before any coupon book is sent to the consumer, to send the consumer a new agreement reflecting such change or alteration.

19. Failing or refusing to cancel all or any portion (at the consumer's option) of a consumer's agreement to purchase a paid-during-service or cash sale plan offered by a consenting party hereunder when said consenting party has, in good faith, determined that a misrepresentation prohibited by this order has been made to such consumer, *Provided, however,* That the sole fact of such good-faith determination shall not be admissible against a consenting party in any proceeding

brought to recover penalties for the alleged violation of any paragraph of this order.

20. Failing, clearly and conspicuously, to designate in writing and disclose orally at or before the signing by the consumer of an agreement to purchase the products or services described herein, on the same side of the page as, and above or adjacent to, the place for the consumer's signature:

(a) the total cash price;

(b) the down payment;

(c) the unpaid balance of the cash price;

(d) the number, amount, and due dates or period of payments scheduled to satisfy the payments of the agreement;

and, if all or any portion of the purchase price is being financed:

(e) the amount financed; and,

(f) the rate of the finance charge, if any, expressed as the annual percentage rate.

21. In the event of the discontinuance of publication, or other unavailability of any magazine subscribed for, at any time during the life of the agreement, failing to offer the subscriber the right to substitute one or more magazines or other publications, or any other arrangement which shall be satisfactory to the consumer.

22. Placing in the hands of consenting parties' employees, or other authorized representatives offering either the paid-during-service or cash sale plans to consumers, the means and instrumentalities, by and through which consumers may be misled or deceived in the manner or by the acts and practices prohibited by this order.

II

It is further ordered, That the Hearst Corporation, through Periodical Publishers' Service Bureau, Inc., and Periodical Publishers' Service Bureau, Inc., or any future subsidiary:

(a) (1) Deliver by hand or by registered mail a copy of this decision and order to the executive personnel of the operating divisions of a consenting party selling or promoting the products or services by and through the plans included in this order; (2) deliver by hand or registered mail a copy of this decision and order to each of the branch managers and their

employees, salesmen, agents and solicitors, and present and future franchisees and licensees of a consenting party, who may from time to time be so engaged; and (3) require the applicable consenting party's present and future licensees and franchisees to deliver a copy of this decision and order to each of said licensees' and franchisees' employees, agents, salesmen, solicitors, independent contractors, and other representatives so engaged.

(b) Require persons described in (a) (1) and (2) heretofore to sign a form returnable to the applicable consenting party clearly stating such person's intention to conform his business practices to the requirements of this order.

(c) Inform each person so described in Paragraph (a) (1) and (2) hereof that such consenting party shall not contract with any such persons for the solicitation of the magazine subscription selling plans described herein, unless such person agrees to and does file notice with the applicable consenting party that it will conform its business practices to the provisions contained in this order.

(d) Shall not use the services of such persons described in (a) (1) and (2) above to solicit the subscription offerings described herein, if such person will not agree to so file such notice and conform his business practices to the provisions of this order.

(e) So inform such persons described in Paragraph (a) (1) and (2) above that such consenting party is obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order.

(f) Initiate a program of continuing supervision of the activities of the applicable consenting party's branches, licensees and franchisees, provided that such consenting party shall not be required to initiate any program of supervision of franchisees or licensees which would contravene the antitrust or any other laws.

(g) Terminate the authority of any such persons described in Paragraph (a) (1) or (2) above, who are revealed by the aforesaid program of supervision or otherwise, to be continuing on their own to engage in the acts or practices prohibited by this order, to the extent that said order applies to such persons, provided that such violations of any terms of this order by any such present or future licensees, franchisees,

representatives or employees will not be deemed a violation of this order by the consenting parties, unless the applicable consenting party fails to terminate or cancel the authority of such persons within a reasonable time of determining, in good faith, a violation of this order.

III

It is further ordered, That the consenting parties herein shall notify the Commission at least thirty (30) days prior to any proposed change in the structure of either of the corporate consenting parties, 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 respective corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the consenting parties 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.

As used in this order, the term "consumer" is defined as the party who is a natural person to whom the applicable consenting party offers to sell or sells magazine subscriptions, or a combination of magazine subscriptions and a book or books, the subject of the transaction and of the paid-during-service or cash sale plan, on its subscription agreement forms pirmarily for personal, family or household purposes.

As used in this order, the term "cash sale" shall mean the sale to a consumer by the applicable consenting party of magazine subscriptions, or a combination of magazine subscriptions and a book or books, by means of a consenting party's original subscription agreement, obtained by that category of sales personnel referred to in the trade as "field representatives" or "traveling crews," who sell such agreements during the course of door-to-door solicitations in consideration of one immediate full payment or two payments, as contrasted with the more numerous products or payments involved in paid-during-service plans.

As used in this order, the term "paid-during-service" shall mean the sale by an applicable consenting party to a consumer of two or more magazine subscriptions, or a combination of magazine subscriptions and a book or books, by its door-to-door, mail or telephone solicitation, and subsequent signing of a consenting party's

original subscription plan agreement at the consumer's home, office or at an exhibit (*i.e.*, a temporary booth in space leased by a consenting party at a fair, store exhibit or like facility, wherein and whereby the plans described herein are offered to consumers) or confirming any renewal thereof, the cost of which subscriptions is paid or payable in equal, successive payments over a period of two or more successive months, or sooner, at the option of the consumer.

As used in this order, the phrase "door-to-door, mail or telephone solicitation" of a consenting party's subscription agreements relates only to such solicitation of consumers used by the applicable consenting party to initiate or effect sales or collections pursuant to a paid-during-service plan or a cash sale plan.

IN THE MATTER OF

SONOTONE CORPORATION

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

Docket C-2414. Complaint, June 19, 1973—Decision, June 19, 1973.

Consent order requiring an Elmsford, New York, manufacturer, distributor, and repairer of hearing aids, among other things to cease imposing customer and territorial restrictions and exclusive dealing requirements on its dealers; price-fixing activities; requiring its dealers to furnish names and addresses of customers; and failing to include and deliver any express product warranty.

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 party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Sonotone Corporation (hereinafter sometimes referred to as "Sonotone") is a corporation organized

under the laws of the State of New York. Its principal office and place of business is at Saw Mill River Road, Elmsford, New York.

Sonotone is a wholly–owned subsidiary of Clevite Bearing Division of Gould, Incorporated, a Delaware corporation. Gould's principal office and place of business is at 8550 West Bryn Mawr, Chicago, Illinois. Gould, Incorporated, is a diversified manufacturer of many industrial and consumer products, including electronic instruments and systems, electrical products, automotive, industrial nickel-cadmium and specialty type batteries and mechanical products for vehicles, and machinery parts and filters. Gould's 1970 sales are reported at $339 million.

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

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

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

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

PAR. 6. In 1970, the top four companies in the hearing aid industry accounted for approximately 50 percent of the dollar value of shipments; the top eight companies, including respondent

Sonotone, accounted for approximately 70 percent of such shipments; and the top twenty companies accounted for over 90 percent of the industry's shipments.

PAR. 7. In 1970, respondent Sonotone, which has manufactured hearing aids since 1929, was the fifth largest hearing aid manufacturer with sales in excess of three million dollars, representing approximately 6 percent of the market.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process. The success of the established manufacturers in selling their products has been based primarily on their ability to secure the services of retail dealers to sell their products to the hearing handicapped. Similarly, to be successful, new entrants into the market must secure distribution through established dealers.

Approximately 60 percent of the retail sales of hearing aids occur as a result of initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to the dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about $100, the average retail price to the hearing handicapped is about $350. More than 50 percent of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

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

Among such courses of business behavior are the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

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

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

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

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

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

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

E. It prohibits others, not its dealers, from dealing in, or repairing Sonotone products;

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

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

(1) Respondent uses agreements or understandings which

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

(b) require a dealer to achieve a sales quota by selling Sonotone hearing aids within the assigned territory under a penalty of reducing or redefining the assigned territory, or appointing additional dealers therein;

(c) permit or encourage its dealers to use the Sonotone brand name in conjunction with a geographic identification of the dealers' locations in the dealers' trade styles on condition that its dealers sell only Sonotone hearing aids;

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

(e) require a dealer to participate in Sonotone cooperative advertising and other sales promotion programs;

(f) allow for termination of the contract upon dealer's violation of any provision thereof;

(2) Respondent refuses to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial exclusivity so that he is not in competition with any other dealer selling Sonotone hearing aids;

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

(4) Respondent offers to its dealers a cooperative advertising plan which provides that Sonotone will not share the cost of any dealer advertisement outside of his assigned territory, or which

mentions in any way that the dealer also offers for sale other brands of hearing aids;

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

(6) Respondent issues to its dealers price lists or provides other means by which the retail prices for Sonotone hearing aids are set forth;

(7) Respondent issues to its dealers lists of retail repair prices set by the respondent;

(8) Respondent instructs its dealers not to solicit, sell, or make delivery of any of respondent's hearing aids outside of their assigned territory;

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

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

(11) Respondent prohibits its selected dealers from selling Sonotone hearing aids to other dealers of hearing aids;

(12) Respondent provides in its standard form dealer contract that it has the right to terminate the contract, at any time, upon ninety days notice to the dealer;

(13) Respondent provides in its standard form contract that in the event of termination:

(a) Sonotone has the right to repurchase the terminated dealer's inventory of Sonotone products;

(b) Sonotone, or a person designated by Sonotone, has the right to purchase from the terminated dealer any and all of the dealer's signs, equipment and fixtures relating to such dealer's business in Sonotone hearing aids; and

(c) the terminated dealer is not entitled to any compensation for the good will of his business.

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

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

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

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

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

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

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

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

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

(9) Those engaged in the repairing or servicing of hearing aids in competition with respondent have been deprived of their right to repair or service Sonotone hearing aids.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 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 Sonotone Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at Saw Mill River Road, city of Elmsford, State of New York. Sonotone is a wholly–owned subsidiary of Gould, Incorporated, a Delaware Corporation. Gould's principal office and place of business are at 8550 West Bryn Mawr, Chicago, Illinois.

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

ORDER

I

It is ordered, That respondent Sonotone Corporation, and its subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, advertising, offering for sale, sale or repair of its own brand name or trademark hearing aids, or related products, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

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

2. Refusing to make available promptly upon request

(a) a hearing aid, accessory or any written materials

necessary to fit and sell such hearing aid or accessory, to any dealer engaged in the sale of hearing aids, if respondent makes such products available to any other dealer located within 100 miles of the requesting dealer, or

(b) a repair or replacement part or any written materials necessary to repair or replace such hearing aid, to any person engaged in the repair of hearing aids when requested for such purpose, if respondent makes repair or replacement parts available to any dealer for such purpose;

Provided, however, That if no other provision of this order is violated thereby:

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

(2) respondent may refuse to make available directly from it any of its products to any dealer or person if such requesting dealer or person is able promptly to obtain the product from another dealer or distributor at respondent's price to dealers for a single unit plus a reasonable handling charge, and

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

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

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

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

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

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

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

7. Requiring that a dealer of the respondent's hearing aids submit to respondent any name or address of any customer of such dealer, or maintaining, using, publishing or disseminating for any purpose any name or address of any customer of a dealer of the respondent's hearing aids obtained from such dealer after the date of this order without securing a prior written consent of such dealer for such purpose;

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

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

II

It is further ordered, That respondent shall:

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

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

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

(d) Within one hundred and twenty (120) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, including a list of all dealers and other persons on whom it has served a copy of Appendix A, and a copy of the publication which includes respondent's advertisement required by this order;

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

(f) Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidi-

aries, or any other change in the corporation which may affect compliance obligations arising out of this order.

APPENDIX A

(LETTER TO HEARING AID DEALERS)

(Official Stationery of
Sonotone Corporation)

Dear ————————

Sonotone Corporation has entered into a consent order agreement with the Federal Trade Commission which obligates the company not to impose various restrictions upon dealers or to engage in certain other practices. This agreement is for settlement purposes only and does not constitute an admission by the company that it has engaged in any unlawful conduct.

A copy of the pertinent provisions of the consent order is enclosed for your careful examination. If in the future you believe that any of its terms have been violated, the details may be reported in writing to:

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

Under the consent order Sonotone can, and expects to, continue to deal with you as the dealer in your area to whom we look for effective sales, service and promotion of our products. In addition, we invite you to serve as a distributor of Sonotone products to other hearing aid dealers. Under the consent order, Sonotone is obliged to sell directly to other qualified dealers only if they are unable to purchase Sonotone products from a dealer such as yourself promptly and at a price which does not exceed Sonotone's price to dealers for a single unit plus a reasonable handling charge.*

We look forward to continuing our association with you consistent with the letter and spirit of the consent order agreement.

Very truly yours,

(Name),
President,
Sonotone Corporation.

* The foregoing paragraph may be omitted at respondent's option.

IN THE MATTER OF

ALUMINUM COMPANY OF AMERICA, ET AL.—Docket C–2415

ARMCO STEEL CORPORATION, ET AL.—Docket C–2416

CONSENT ORDERS IN REGARD TO THE ALLEGED VIOLATION OF THE CLAYTON AND FEDERAL TRADE COMMISSION ACTS

Complaints, June 21, 1973—Decisions, June 21, 1973.

Consent orders requiring the largest domestic aluminum company located in Pittsburgh, Penn., and the third largest domestic steel company located in Middletown, Ohio, among other things not to permit interlocking directorates unlawfully and requiring their directors to make annual statements as to those corporations having an aggregate worth over $1 million of which they are also directors.

COMPLAINT

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

PARAGRAPH 1. Respondent Armco Steel Corporation ("Armco") is a corporation organized and existing under and by virtue of the laws of the State of Ohio, maintaining its principal place of business at Middletown, Ohio. At all times relevant to this complaint, Armco had capital, surplus, and undivided profits aggregating in excess of one billion dollars. In 1971 it had revenues of approximately $1.7 billion.

PAR. 2. Respondent Aluminum Company of America ("Alcoa") is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, maintaining its principal place of business at Pittsburgh, Pennsylvania. At all times relevant to this complaint, Alcoa had capital, surplus, and undivided profits aggregating in excess of one billion dollars. In 1971 Alcoa had revenues of approximately $1.5 billion.

PAR. 3. John A. Mayer is a resident of the State of Pennsylvania. In 1967 he was elected to the board of directors of Alcoa, and he has been a director of Alcoa from the time of his election to and including the date of this complaint. In 1958 he was elected to the board of directors of Armco, and he was a director of Armco from that time until December 1, 1972. He resigned from the

Armco board of directors after having been notified of the Commission's intention to issue a complaint in this matter.

PAR. 4. (a) Alcoa is the largest domestic aluminum company. In 1971 it accounted for approximately 25 percent of total aluminum industry shipments and approximately 30 percent of primary aluminum capacity.

(b) Armco is by 1971 sales the third largest domestic steel company. Its sales in that year accounted for approximately 10 percent of the revenues of companies engaged primarily in the steel industry and approximately 5 percent of total steel industry shipments in that year.

PAR. 5. Aluminum and steel are metals which are interchangeable for many uses, including but not limited to, building materials, such as industrial and commercial siding and roofing, tanks and other items for cryogenic use, tubing, truck bodies and trailers and similar containers, automobile bumpers and trim, beverage containers, and automobile engine blocks.

PAR. 6. (a) Alcoa's and Armco's respective businesses each encompasses the manufacture and sale of aluminum materials or products, or steel materials or products, respectively, of every kind, including, but not limited to, those referred to in Paragraph Five.

(b) Alcoa and Armco have been and are actual present competitors of each other with respect to many products, such as, but not limited to, building materials, including specifically industrial and commercial siding and roofing, tanks and other items for cryogenic use, tubing, and automobile bumpers and trim.

PAR. 7. (a) Alcoa and Armco have been and are by the nature of their business and location of operation competitors.

(b) The elimination of competition by agreement among Alcoa and Armco would hinder, foreclose, and restrain competition, or tend to create a monopoly, in the aluminum or steel industries as a whole or with respect to specific products supplied by each respondent corporation, as hereinabove alleged.

PAR. 8. (a) The products and materials referred to in Paragraph Six have been and are sold and distributed by Alcoa and Armco from locations in various States of the United States to purchasers located in many other States of the United States.

(b) Alcoa and Armco each engage in commerce as that term is defined in the Clayton Act and Federal Trade Commission Act.

PAR. 9. The foregoing acts and practices of respondents, as hereinbefore alleged and set forth, constitute violations of Section

8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

DOCKET C-2415

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondent Alcoa and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent 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 and by the decision and order in this matter relating to respondent Armco Steel Corporation, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Aluminum Company of America 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 Alcoa Building, Pittsburgh, Pennsylvania.

2. Respondent Armco Steel Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Middletown, Ohio.

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

ORDER

I

It is ordered, That respondent Aluminum Company of America ("Alcoa"), a corporation, shall not permit on its board of directors any person who is at the same time a director of Armco Steel Corporation.

II

It is further ordered, That respondent Alcoa shall obtain from each Alcoa director an annual statement showing the name, location, and business of each other corporation, having capital, surplus and undivided profits in excess of $1,000,000 of which such Alcoa director is also a director.

III

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

IV

It is further ordered, That respondent Alcoa shall within 30 days after service upon it of this order file with the Commission a report, in writing, setting forth the manner and form in which it intends to comply with this order.

DOCKET C–2416

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondent Armco and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent 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 and by the decision and order in this matter relating to respondent Aluminum Company of America issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Aluminum Company of America 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 Alcoa Building, Pittsburgh, Pennsylvania.

2. Respondent Armco Steel Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Middletown, Ohio.

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

ORDER

I

It is ordered, That respondent Armco Steel Corporation ("Armco"), a corporation, shall not permit on its board of directors any person who is at the same time a director of Aluminum Company of America.

II

It is further ordered, That respondent Armco shall obtain from each Armco director an annual statement showing the name, location, and business of each other corporation having capital, surplus and undivided profits in excess of $1,000,000 of which such Armco director is also a director.

III

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

IV

It is further ordered, That respondent Armco shall within 30 days after service upon it of this order file with the Commission a report, in writing, setting forth the manner and form in which it intends to comply with this order.

IN THE MATTER OF

ALUMINUM COMPANY OF AMERICA, ET AL.—
Docket C-2417

KENNECOTT COPPER CORPORATION, ET AL.—
Docket C-2418

CONSENT ORDERS IN REGARD TO THE ALLEGED VIOLATION OF THE CLAYTON AND FEDERAL TRADE COMMISSION ACTS

Complaints, June 21, 1973—Decisions, June 21, 1973.

Consent orders requiring the largest domestic aluminum company located in Pittsburgh, Penn., and the largest domestic copper company located in New York City, among other things to cease permiting interlocking directorates unlawfully and requiring its directors to make annual statements as to those corporations having an aggregate value in excess of $1 million of which they are also directors.

COMPLAINT

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

PARAGRAPH 1. Respondent Aluminum Company of America ("Alcoa") is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, maintaining its

principal place of business at Pittsburgh, Pennsylvania. At all times relevant to this complaint, Alcoa had capital, surplus, and undivided profits aggregating in excess of one billion dollars. In 1971 Alcoa had revenues of approximately $1.5 billion.

PAR. 2. Respondent Kennecott Copper Corporation ("Kennecott") is a corporation organized and existing under and by virtue of the laws of the State of New York, maintaining its principal place of business at New York, New York. At all times relevant to this complaint, Kennecott had capital, surplus, and undivided profits aggregating in excess of one billion dollars. In 1971 it had revenues of approximately $1.3 billion.

PAR. 3. Russell DeYoung is a resident of the State of Ohio. In 1970 he was elected to the board of directors of Alcoa, at which time he was a director of Kennecott, and he was a director of both corporations from that time until November 30, 1972. He resigned from the Alcoa board of directors after having been notified of the Commission's intention to issue a complaint in this matter.

PAR. 4. (a) Alcoa is the largest domestic aluminum company. In 1971 it accounted for approximately 25 percent of total aluminum industry shipments and approximately 30 percent of primary aluminum capacity.

(b) Kennecott is by 1971 sales the largest domestic copper company.

PAR. 5. Aluminum and copper are metals which are interchangeable for many uses, including but not limited to, electrical conductor and tubing and other components for heat exchangers.

PAR. 6. (a) Alcoa's and Kennecott's respective businesses each encompasses the manufacture and sale of aluminum materials or products, or copper materials or products, respectively, of every kind, including, but not limited to, those referred to in Paragraph Five.

(b) Alcoa and Kennecott are actual present competitors of each other with respect to many products, such as, but not limited to, electrical conductor and tubing and other components for heat exchangers.

PAR. 7. (a) Alcoa and Kennecott are by the nature of their business and location of operation competitors.

(b) The elimination of competition by agreement among Alcoa and Kennecott would hinder, foreclose, and restrain competition, or tend to create a monopoly, in the aluminum or copper industries as a whole or with respect to specific products supplied by each respondent corporation, as hereinabove alleged.

PAR. 8. (a) The products and materials referred to in Paragraph Six are sold and distributed by Alcoa and Kennecott from locations in various States of the United States to purchasers located in many other States of the United States.

(b) Alcoa and Kennecott each engage in commerce as that term is defined in the Clayton Act and Federal Trade Commission Act.

PAR. 9. The foregoing acts and practices of respondents, as hereinbefore alleged and set forth, constitute violations of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

DOCKET C–2417

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondent Alcoa and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent 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 and by the decision and order in this matter relating to respondent Kennecott Copper Corporation, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Aluminum Company of America 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 Alcoa Building, Pittsburgh, Pennsylvania.

2. Respondent Kennecott Copper Corporation 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 161 East 42nd Street, New York, New York.

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

ORDER

I

It is ordered, That respondent Aluminum Company of America ("Alcoa") a corporation, shall not permit on its board of directors any person who is at the same time a director of Kennecott Copper Corporation.

II

It is further ordered, That respondent Alcoa shall obtain from each Alcoa director an annual statement showing the name, location, and business of each other corporation, having capital, surplus and undivided profits in excess of $1,000,000 of which such Alcoa director is also a director.

III

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

IV

It is further ordered, That respondent Alcoa shall within 30 days after service upon it of this order file with the Commission a report, in writing, setting forth the manner and form in which it intends to comply with this order.

DOCKET C–2418

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5 of the

Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondent Kennecott and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent 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 and by the decision and order in this matter relating to respondent Aluminum Company of America, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Aluminum Company of America 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 Alcoa Building, Pittsburgh, Pennsylvania.

2. Respondent Kennecott Copper Corporation 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 161 East 42nd Street, New York, New York.

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

ORDER

I

It is ordered, That respondent Kennecott Copper Corporation (Kennecott), a corporation, shall not permit on its board of directors any person who is at the same time a director of Aluminum Company of America.

II

It is further ordered, That respondent Kennecott shall obtain from each Kennecott director an annual statement showing the name, location, and business of each other corporation having capital, surplus and undivided profits in excess of $1,000,000 of which such Kennecott director is also a director.

III

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

IV

It is further ordered, That respondent Kennecott shall within 30 days after service upon it of this order file with the Commission a report, in writing, setting forth the manner and form in which it intends to comply with this order.

IN THE MATTER OF

GOLDEN GRAIN MACARONI COMPANY, ET AL.

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

Docket 8737. Complaint, May 23, 1967—Modified order, June 26, 1973.

Order modifying an earlier order dated January 18, 1971, 36 F.R. 5212, 78 F.T.C. 63, pursuant to order of December 20, 1972, of the United States Court of Appeals for the Ninth Circuit,* by deleting that part of the order requiring divestiture of Oregon Macaroni Company.

MODIFIED ORDER

Respondent Golden Grain Macaroni Company having filed in the United States Court of Appeals for the Ninth Circuit a petition to review and set aside the order issued herein on January 18, 1971;

*On May 29, 1973, the Supreme Court denied the petition filed by respondent for writ of certiorari, 412 U.S. 918.

and the court on December 20, 1972, having rendered its decision and entered its judgment affirming and enforcing said order except for that part of the order requiring divestiture of Oregon Macaroni Company; and the United States Supreme Court having denied a petition filed by respondent for writ of certiorari to the court of appeals for review of said decision and judgment.

Now therefore it is hereby ordered, That the order of January 18, 1971, be, and it hereby is, modified in accordance with the judgment of the court to read as follows:

It is ordered, That respondent, Golden Grain Macaroni Company, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within one (1) year from the date this order becomes final, divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission, all stock, assets, or other interests acquired by Golden Grain Macaroni Company, or its subsidiaries, in Porter-Scarpelli Macaroni Company, as a result of Golden Grain Macaroni Company's acquisition of Mission Macaroni Company.

It is further ordered, That respondent Golden Grain Macaroni Company, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within one (1) year from the date this order becomes final, divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission, all stock, assets, or other interests, including the option to purchase additional stock or other interests, in Major Italian Foods Company, Inc., as a result of Golden Grain Macaroni Company's acquisition of stock of Major Italian Foods Company, Inc.

It is further ordered, That none of the stock, assets, properties, rights or privileges to be divested be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee or agent of, or under the control or direction of, Golden Grain Macaroni Company or any of its subsidiaries or affiliates, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of voting stock of Golden Grain Macaroni Company, or any of its subsidiaries or affiliates.

It is further ordered, That for a period of ten (10) years respondent Golden Grain Macaroni Company shall cease and desist from acquiring, directly or indirectly, without prior approval of the Federal Trade Commission, the whole or any part of the share

capital or other assets of any corporation engaged in the manufacture of dry paste products within the Pacific Northwest.

It is further ordered, That respondents shall, within sixty (60) days from the date of service of this order and every sixty (60) days thereafter until divestiture is fully effected, submit to the Commission a detailed report of their actions, plans, and progress in complying with the divestiture provisions of this order, and fulfilling their objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock, assets, properties, rights or privileges to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

IN THE MATTER OF

HEUBLEIN, INC.

Docket 8904. June 26, 1973.

Order granting Allied Grape Growers leave to participate in these proceedings with respect to the issue of relief only, in a fashion to be determined by the administrative law judge in his discretion.

Commissioner Jones dissenting with dissenting statement.

DISSENTING STATEMENT

BY JONES, *Commissioner.*

The Commission displays a curious philosophy in its intervention determinations. Intervention requests from parties who assert potential injury if a violation of the law is *found* are typically granted whereas intervention requests by persons who claim potential injury if *no* law violation is found are summarily treated and almost uniformly denied.

I cannot agree that the Commissioners are less in need of special guidance and insights respecting the impact of their decisions on the interests of the public than they are as respects the impact of their decisions on the interests of particular individual firms. Indeed, I would go so far as to say the Commission has greater need of the insights and expertise of those persons asserting the needs of the public interest in a given Commission proceeding than they have of those asserting private and special interests in the outcome of such proceedings. This is so, in my judgment,

because of the fact that the interests of the public are frequently less tangible and more difficult to identify, quantify and evaluate than the interests of individual businessmen affected by a Commission order.

I can understand that there can be valid differences among Commissioners as to the intervention standards which might properly be applied to intervenors in Commission actions. I cannot understand, however, that there can be validly defensible differences in the circumstances governing the application of the relevant standards to intervenors asserting a business interest in the outcome of Commission proceedings and those who assert a more generalized public interest in the outcome.

In the instant case, the intervenor asserts a substantial and apparently significant interest in these proceedings which on its face is of such a nature as to suggest perhaps that Allied should have been named as a party to the proceeding. Therefore, I believe the proper disposition of the present intervention request would have been to have amended the complaint to name Allied as a party or to have conditioned its intervention on Allied's agreement to be bound by the order. However, since the Commission does not construe Allied's interest in these proceedings as warranting such action, I cannot agree with its decision to grant a limited intervention restricted to the issue of relief since I cannot differentiate the interest asserted by Allied in this proceeding from the interest asserted by the consumer intervenors in the ITT Wonder Bread case which the Commission summarily denied. I, therefore, dissent from this action of the Commission that the Wonder Bread intervention rationale is the standard which a majority of the Commission believes is applicable to intervention requests.

ORDER GRANTING LEAVE TO PARTICIPATE WITH RESPECT TO THE ISSUE OF RELIEF

This matter is before the Commission upon the application of Allied Grape Growers for an interlocutory appeal from the administrative law judge's denial of application for leave to intervene filed January 31, 1973, and upon respondent's opposition thereto filed February 7, 1973. By order of March 15, 1973, the Commission granted Allied's petition to take an interlocutory appeal, and ordered supplemental briefs, which have since been filed by Allied (on March 28, 1973) and Heublein (on April 5, 1973).

Upon consideration of the materials before it, the Commission

has determined to grant Allied leave to participate in these proceedings with respect to the issue of relief only, either at a special hearing devoted to the issue of relief, or during such parts of the trial as may relate to the issue of relief, as distinguished from the issue of legality of the acquisition, in the discretion of the administrative law judge, as provided hereinafter.

Allied's concern with these proceedings appears to stem from its various legal relationships with respondent Heublein, United Vintners, Inc. (United), and Heublein Allied Vintners (Vintners). Allied's predecessor association (also called Allied) owned all of United, a marketing and production subsidiary with a large output of wine products. Pursuant to a contract with Heublein and other parties (referred to as the merger agreement), United was merged into Vintners, a newly formed California corporation. Allied received 18 percent of the stock of Vintners, while the remaining 82 percent of Vintners, and through it United, is owned by Heublein. The proposed order in this case would provide for divestiture by Heublein of its 82 percent interest in United.

Partial consideration for consummation of the merger agreement was the consummation of a "Supply Contract" by Heublein, Allied, Vintners, and United. In brief, the supply contract grants Allied the right to supply United's grape requirements for up to 80 years, depending upon whether it is renewed, as well as most of Heublein's California grape requirements for the same period. Heublein is forbidden under the contract from disposing of United's trademarked brands (which would, of course, diminish United's requirements for Allied's grapes). Heublein is obliged to exercise its 82 percent ownership of Vintners in such a way that one-third of Vintners' directors will be nominees of Allied, and Vintners is obliged to exercise its control of United in such a way that no fewer than 40 percent of United's directors will be Allied people.

It is clear from the foregoing, that in selling 82 percent of its marketing arm to Heublein, Allied intended thereby to retain sufficient contractual rights so that United would remain a large purchaser of grapes produced by Allied's grower-members. Allied now sees the rights and expectations with which it entered into its joint venture threatened by the Commission's complaint. There can be no doubt that a challenge to the validity of Heublein's acquisition of United threatens Allied's rights and may diminish the advantages flowing from those rights as contemplated by Allied when it entered into the joint venture with Heublein.

The administrative law judge determined that Allied had not demonstrated the requisite "good cause" justifying intervention under Section 5(b) of the Federal Trade Commission Act. The determination of whether or not justification exists to warrant intervention requires a delicate balancing process in which the interests of the applicant and the applicant's potential contribution to the proceeding must be weighed against the detriment to the public interest resulting from unduly complicating and prolonging the proceedings. In these circumstances, flexibility and precision are crucial, both in defining the precise issues as to which justification for participation exists, and in defining the type of participation that will best serve competing interests.

It is clear that "good cause" requires more than a mere showing that the applicant's contractual rights may be adversely affected by the outcome of a Commission proceeding. The determination of this issue necessarily depends on the particular circumstances of each case. In this case, applicant has demonstrated that, should the Commission determine that the acquisition is violative of Section 7 and order a divestiture of the acquired firm, applicant's important contractual rights may be abrogated and its very viability threatened. Clearly, the instant proceeding is no ordinary acquisition case.

While applicant's interests are considerable, it seems incontrovertible that as to the principal issue in this case—the question of liability, they will be represented with entire adequacy. Participation by Allied in the proceedings as to this issue would add little, while serving to delay the proceedings. It is the issue of appropriate relief as to which Allied may be inadequately represented, and as to which it may be in a position to contribute uniquely and substantially to the Commission's capacity to reach a just result.

Therefore, the Commission believes that under the circumstances, the appropriate solution to the problem is to provide that Allied may participate in the proceeding with respect to the issue of relief only, in a fashion to be determined by the administrative law judge in his discretion. For example, the administrative law judge may provide for a separate hearing devoted solely to the issue of relief, at which Allied may present witnesses and cross-examine those of Heublein and complaint counsel, or he may permit Allied to present and cross-examine witnesses throughout the course of the trial, but only to the extent that such participation materially bears on the issue of *relief*. With respect to other mat-

ters, Allied shall retain the status of *amicus curiae* as provided by the order of the administrative law judge.

For the foregoing reasons, the order of the administrative law judge is modified to provide for participation by applicant Allied as provided hereinabove.

By the Commission.

Commissioner Jones dissenting.

IN THE MATTER OF

RADIOEAR CORPORATION

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

Docket C-2419. Complaint, June 26, 1973—Decision, June 26, 1973.

Consent order requiring a Canonsburg, Penn., manufacturer, distributor, and repairer of hearing aids, among other things to cease imposing customer and territorial restrictions and exclusive dealing requirements on its dealers; price-fixing activites; requiring its dealers to furnish names and addresses of customers; and failing to include and deliver any express product warranty.

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 party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Radioear Corporation (hereinafter sometimes referred to as "Radioear") is a corporation organized under the laws of the State of Delaware, with its principal office and place of business at 375 Valley Brook Road, Canonsburg, Pennsylvania. Radioear Corporation is a subsidiary of the Esterline Corporation, New York, New York.

PAR. 2. Respondent is engaged in the business of manufacturing, distributing, selling and repairing of Radioear brand hearing

aids. It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

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

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

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

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

PAR. 7. In 1970, respondent Radioear, which has manufactured hearing aids since 1924, had sales in excess of two million dollars, making it the seventh largest hearing aid manufacturer in the United States market.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process. The success of the established manufacturers in selling their products has been based primarily on their ability to secure

the services of retail dealers to sell their products to the hearing handicapped. Similarly, to be successful, new entrants into the market must secure distribution through established dealers.

Approximately 60 percent of the retail sales of hearing aids occur as a result of initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model, rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about $100, the average retail price to the hearing handicapped is about $350. More than 50 percent of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

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

Among such courses of business behavior are the following:

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

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

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

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

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

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

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

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

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

(h) in the event of such termination permit the manufacturers

to repurchase the terminated dealers' products purchased from such manufacturers;

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

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

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

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

(7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

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

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

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

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

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

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

E. It prohibits others, not its dealers, from dealing in, or repairing Radioear hearing aids; and

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

PAR. 11. In furtherance of this course of action, respondent has

been and now is engaged in the following acts and practices, among others:

(1) Respondent uses agreements or understandings which

(a) require a dealer to sell Radioear hearing aids within an assigned territory on penalty of forfeiting his sales profit to another Radioear dealer in whose territory sales would be made;

(b) require a dealer to deal exclusively in Radioear hearing aids within that assigned territory upon penalty of appointment of additional dealers in such territory;

(c) require a dealer to sell Radioear hearing aids only to customers found within the assigned territory;

(d) require a dealer to sell Radioear hearing aids at prices established by respondent;

(e) require a dealer to submit to the respondent the names and addresses of each customer who purchases Radioear hearing aids;

(f) condition the express product warranty on the submission of the names and addresses of each such customer to the respondent;

(g) prohibit a dealer from dealing with the United States Government, State Governments or agencies thereof; and

(h) allow for immediate termination of contract upon dealer's violation of any provision thereof;

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

(3) Respondent issues to its dealers price lists in which the retail prices for Radioear hearing aids are set forth;

(4) Respondent offers to its dealers a cooperative advertising plan which provides that Radioear will not share the cost of any dealer advertisement which mentions in any way that the dealer also offers for sale other brands of hearing aids;

(5) Respondent refuses to ship additional merchandise to a dealer unless or until the dealer submits to Radioear the names and addresses of the purchasers of hearing aids previously shipped to the dealer;

(6) Respondent refuses to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial exclusivity so that he is not in competition with any other dealer selling Radioear hearing aids;

(7) Respondent refuses to sell Radioear repair parts or to pro-

vide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

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

(9) Respondent prohibits its selected dealers from selling Radioear hearing aids to other dealers of hearing aids;

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

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

(a) a dealer is required to discontinue the use of Radioear brand name in his name, sign or advertising in connection with hearing aid business;

(b) a dealer is prohibited from receiving any mail addressed to him in a manner including the name Radioear in it, and he is to instruct the postmaster to forward such mail either to the respondent or to a person of respondent's choice;

(c) a dealer is prohibited from using Radioear advertising material and must either destroy it or return it to respondent; and

(d) Radioear has the right to reacquire the terminated dealer's inventory of Radioear hearing aids.

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

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

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

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

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

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

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

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

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

(9) Those engaged in the repairing or servicing of hearing aids in competition with respondent have been deprived of their right to repair or service Radioear hearing aids.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 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, 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 com-

plaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Radioear Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 375 Valley Brook Road, city of Canonsburg, State of Pennsylvania. Radioear Corporation is a subsidiary of Esterline Corporation of 280 Park Avenue, New York, New York.

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

ORDER

I

It is ordered, That respondent Radioear Corporation, and its subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, advertising, offering for sale, sale or repair of its own brand name or trademark hearing aids, or related products, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

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

2. Refusing to make available promptly upon request

(a) a hearing aid, accessory or any written materials necessary to fit and sell such hearing aid or accessory, to any dealer engaged in the sale of hearing aids, if respondent makes such products available to any other dealer located within 100 miles of the requesting dealer, or

(b) a repair or replacement part or any written materials necessary to repair or replace such hearing aid, to any person engaged in the repair of hearing aids when requested for such purpose, if respondent makes repair

or replacement parts available to any dealer for such purpose;

Provided, however, That if no other provision of this order is violated thereby:

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

(2) respondent may refuse to make available directly from it any of its products to any dealer or person if such requesting dealer or person is able promptly to obtain the product from another dealer or distributor at respondent's price to dealers for a single unit plus a reasonable handling charge, and

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

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

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

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

4. Failing to return any hearing aid submitted to respondent for repair directly to the person who submitted such

product for repair, unless otherwise instructed in writing by such person;

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

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

7. Requiring that a dealer of the respondent's hearing aids submit to respondent any name or address of any customer of such dealer, or maintaining, using, publishing or disseminating for any purpose any name or address of any customer of a dealer of the respondent's hearing aids obtained from such dealer after the date of this order without securing a prior written consent of such dealer for such purpose;

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

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

II

It is further ordered, That respondent shall:

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

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

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

(d) Within one hundred and twenty (120) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, including a list of all dealers and other persons on whom it has served a copy of Appendix A, and a copy of the publication which includes respondent's advertisement required by this order;

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

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

APPENDIX A

(LETTER TO HEARING AID DEALERS)

(Official Stationery of
Radioear Corporation)

Dear

Radioear Corporation has entered into a consent order agreement with the Federal Trade Commission which obligates the company not to impose various restrictions upon dealers or to engage in certain other practices. This agreement is for settlement purposes only and does not constitute an admission by the company that it has engaged in any unlawful conduct.

A copy of the pertinent provisions of the consent order is enclosed for your careful examination. If in the future you believe that any of its terms have been violated, the details may be reported in writing to:

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

The entry of this consent order does not affect Radioear's method of consignment selling, so long as no provision of this order is violated, and we may continue to rely on our group of existing dealers as primarily responsible for the effective distribution and service of Radioear products. We look forward to continuing such an association with you consistent with the letter and spirit of our consent order agreement.

Sincerely yours,

(Name),
President,
Radioear Corporation.

IN THE MATTER OF

COMMERCIAL CREDIT COMPANY

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

Docket C-2420. Complaint, June 26, 1973—Decision, June 26, 1973.

Consent order requiring one of the nation's largest independent consumer finance companies located in Baltimore, Maryland, to among other things cease violating the Truth in Lending Act when selling credit life and credit accident and health insurance.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission

Act, and the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Commercial Credit Company, a corporation, hereinafter sometimes referred to as respondent, has 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:

PARAGRAPH 1. Respondent Commercial Credit Company 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 300 Saint Paul Place, Baltimore, Maryland.

Respondent Commercial Credit Company does not engage in any consumer loan transactions itself, but operates through approximately one-hundred fourteen (114) wholly-owned subsidiary loan offices located in all States of the United States except Alaska and Hawaii. Each subsidiary is incorporated in the respective state in which it is located under such names as Commercial Credit Plan or Commercial Credit Corporation. Respondent Commercial Credit Company formulates and controls the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

PAR. 2. Respondent, by and through its various wholly-owned subsidiary corporations, is now, and for some time in the past has been, engaged in consumer financing and the granting of consumer loans to members of the public in all 48 continental States of the United States.

PAR. 3. In the ordinary course and conduct of its business, as aforesaid, respondent regularly extends 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. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of its business, as aforesaid, has charged, and is now charging, a substantial number of consumers for credit life and credit accident and health insurance written in connection with consumer loans.

Typical and illustrative, but not all inclusive, of the circumstances in which such insurance charges are incurred by consumers are the following, which generally occur in the sequence set forth.

1. During the consumer's initial contact with respondent, either on the telephone or in person, respondent orally quotes a monthly repayment figure which includes charges for credit life and credit accident and health insurance.

2. Respondent automatically includes charges for credit life and credit accident and health insurance on the loan disclosure statement, and, unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

3. On that portion of the loan disclosure statement which contains the statements "I ☐ do, ☐ do not desire Credit Life Insurance", and "I ☐ do, ☐ do not desire Credit Accident and Health Insurance," followed by a line for the consumer's signature, respondent, without the permission or authority of the consumer, checks the "I do" boxes and then dates and places an "X" on the line for the borrower's signature.

4. The loan disclosure statement, filled out as indicated above, is presented to the consumer for two signatures, and the consumer is told by respondent's employees to sign next to the "X's" respondent's employees have made. The consumer is not told of the purpose of each signature. These signatures are intended (1) to indicate the consumer's request for the insurance coverage, and (2) to acknowledge the consumer's receipt of the completed loan disclosure statement.

5. Respondent places the charges for credit life and credit accident and health insurance in the "Record of Disbursements" section of the loan disclosure statement, and these charges become part of the "amount financed," but are not included in the computation of the finance charge or the annual percentage rate.

6. If a consumer becomes aware that he has a choice about obtaining credit life and/or credit accident and health insurance and specifically objects to or questions the inclusion of the charges for such insurance, respondent informs the customer that deletion of such charges will require it to have all the loan papers retyped as well as drawing a new check for the amount of the proceeds of the loan, and that this process of redoing the papers will result in delaying the completion of the loan, sometimes by as much as several days.

PAR. 5. By and through the acts and practices described in Paragraph Four, and others of similar import, meaning and consequence, but not specifically set forth herein, respondent, in a substantial number of instances, obtains consumers' signatures

through practices which operate, directly or indirectly, to defeat the elective language of the insurance authorization disclosures by obscuring from consumers knowledge about the option, by misrepresenting to consumers that their signatures are necessary solely for the purpose of consummating the credit transaction, and by discouraging the declination of the coverage when it is questioned. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and/or credit accident and health insurance.

Therefore, respondent, in a substantial number of instances, induces its customers to incur charges for credit life and credit accident and health insurance without said customers making a knowing, affirmative election to have such insurance and, thereby, respondent has failed to obtain from each of its customers a "specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs Four and Five hereof, respondent has failed to include the charges for credit life and credit accident and health insurance in the Finance Charge when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained, as required by Section 226.4(a)(5) of Regulation Z, and thereby respondent:

1. Failed to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

2. Failed to compute and disclose the "annual percentage rate" accurately to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with Sections 226.4, 226.5, and 226.8 of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

STATEMENT OF THE COMMISSION

As Commissioner Jones' dissent indicates, there were no easy solutions available to the Commission in this case. Simply put, the Commission had to decide whether it should take a chance on

litigation while respondent continued its present practices or whether it should obtain immediate relief for those consumers who will deal with respondent in the future. We believe that the public interest is best served by immediate protection of this company's future customers and, therefore, we are compelled to accept the settlement now rather than to proceed along the uncertain path of litigation.

Three factors convince us that the interests of consumers will best be served by the consent order.

—Until a litigated order becomes effective, future customers of Commercial Credit would be left unprotected. These consumers would be denied the immediate benefits the consent order will provide. As a practical matter, these benefits may very well be greater than the benefits which would be derived from resolicitation and restitution after several years of litigation.

—If this matter were to be litigated, the number of the present beneficiaries of the resolicitation and restitution provision would diminish progressively each year.

We cannot agree that the immediate effects of a consent order will not have a deterrent effect on other institutions engaged in similar practices.

DISSENTING STATEMENT OF COMMISSIONER JONES

In my judgment this consent order does not adequately protect the public interest in its disposition of the issues in this case.

The complaint in this case charged respondents with so marketing its loans that consumers were not aware either of the charges being made for credit life, accident and health insurance or of their option to refuse such coverage. Under this order, respondents agree in the future not to offer and collect payments for such insurance unless the consumer has made an affirmative election to have such coverage.

Yet the order permits respondents to continue to collect such premiums from consumers who in the past executed loan agreements containing such insurance premium payment without giving them an opportunity to signify whether they in fact want such coverage. Currently, therefore, consumers who are still making payments on their loan agreements, will, under this order, continue to pay premiums on credit life insurance, accident and health insurance which they may not want. I do not believe this is fair or

adequate relief since it will have no deterrent effect on other financial institutions engaging in this type of practice since they know that they will be able to benefit financially from this practice until the Commission's arm is actually placed on their shoulder.

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 intends to issue, together with a proposed form of order; and

The respondent 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 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 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 Commercial Credit Company 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 300 Saint Paul Place, in the city of Baltimore, State of Maryland.

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 Commercial Credit Company, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corpora-

tion, subsidiary, division or other device, in connection with the granting of consumer loans subject to the provisions of Regulation Z (12 C.F.R. §226.8) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing, when the charges for credit life insurance and/or credit accident and health insurance are not included in the finance charge:

(a) To quote monthly payments, whether on the telephone, in person, or otherwise, which exclude the cost of credit life insurance and/or credit accident and health insurance.

(b) If monthly payments do reflect credit life insurance and/or credit accident and health insurance, such payments may be quoted only if the consumer is clearly told that:

(i) credit life insurance and/or credit accident and health insurance are optional; and

(ii) the consumer's choice regarding the insurance coverage will not be considered in respondent's approval of the consumer's credit.

(c) Respondent's obligation under this provision shall end concurrently with the customer's execution of the separate, personal insurance authorization form required by #2 below.

2. When the charges for credit life insurance and/or credit accident and health insurance are not included in the finance charge:

(a) Failing to present to the borrower as the first document at the time of closing, a separate, written personal insurance authorization form which sets forth clearly and conspicuously:

(i) the borrower has received credit approval up to a specified amount;

(ii) the borrower's decision with regard to the insurance available through respondent is not considered in granting the credit;

(iii) insurance is not required to obtain the loan;

(iv) the total premium for credit life insurance and the total premium for credit accident and health insurance;

(v) the monthly payments which would result

from the borrower's election to take the loan, set forth in the following order from left to right across the document: (1) without either credit life insurance or credit accident and health insurance, (2) with credit life insurance only, (3) with credit accident and health insurance only, and (4) with both credit life insurance and credit accident and health insurance; and

(vi) a signature and date line for each option set forth in (v) above for the consumer to indicate his election;

(vii) the borrower authorizes respondent on behalf of the borrower to pay the insurance premiums to the insurance company for such personal insurance which has been chosen.

(b) Failing to make the disclosures required by subparagraph (a) above on a separate document which contains no other printed or written material. The disclosures required by subparagraphs (ii) and (iii) above shall not be smaller than 12 point type. A form substantially in conformance with Attachment A herein will be considered as in compliance with the provisions of subparagraphs (a) and (b). Respondent shall maintain the original statement for two years following its execution and provide the customer with a copy thereof.

(c) Failing to leave the Truth in Lending disclosure statement blank as to the cost of credit life insurance and/or credit accident and health insurance and all other information or amounts which are affected by the election or declination of insurance until the borrower has signed the written disclosure required by subparagraph (a) above.

(d) Making any marks or otherwise instructing a consumer where to sign or date the separate personal insurance authorization form required by subparagraph (a) above in advance of the consumer's free and independent choice for such insurance.

(e) Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit accident and health insurance are required as a condition of obtaining credit from respondent.

(f) Discouraging, by misrepresentation, oral or other-

wise, directly or by implication, the declination of credit life and/or credit accident and health insurance.

3. Failing to tell every customer the purpose(s) of each signature requested by responednt on any document directly related to the consummation of the credit transaction.

4. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4(a) (5) and 226.8(d) of Regulation Z.

5. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as required by Sections 226.5(b) and 226.8(b) of Regulation Z.

6. Failing, in any consumer loan transaction or advertisement, to make all disclosurse, 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 respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent at its general offices in Baltimore and in each of its subsidiary loan offices who are engaged in the extension of consumer loans, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

It is further ordered, That respondent notify the Commission within thirty (30) days of any change in the corporate respondent which may affect compliance obligations with regard to the extension of consumer loans arising out of this order, 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 with regard to the extension of consumer loans which may affect compliance obligations arising out of this 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.

Commissioner Jones dissented.

ATTACHMENT A

PERSONAL INSURANCE AUTHORIZATION

Your credit has been approved in an amount set forth below.

CREDIT LIFE OR CREDIT ACCIDENT & HEALTH INSURANCE IS NOT REQUIRED IN CONNECTION WITH THE EXTENSION OF CREDIT TO YOU AND YOUR DECISION WITH REGARD TO THE PERSONAL INSURANCE WILL NOT AFFECT THE TOTAL AMOUNT OF CREDIT WHICH HAS BEEN APPROVED FOR YOU.

Total Advance Approved $_____

Insurance Premiums
(For term of transaction)

Credit Life $_____

Credit A & H: $_____

I have read the above written disclosure of personal insurance and have received a fully completed and executed copy of this form. I have reviewed the monthly repayment options set forth below and understand that if I chose a repayment option that includes any of the insurance coverages I am authorizing the lender to pay the insurance premiums on my behalf. I have voluntarily chosen the following repayment option:

Option 1	Option 2	Option 3	Option 4
Monthly Payment Without Personal Insurance	Monthly Payment With Credit Life Only	Monthly Payment With Credit A & H Only	Monthly Payment With Credit Life and A & H
$_____	$_____	$_____	$_____
No. of months ___	No. of months ___	No. of months ___	No. of months ___
_____ (Borrower)	_____ (Insured Borrower)	_____ (Insured Borrower)	_____ (Insured Borrower)
_____ (Borrower)	_____ (Borrower)	_____ (Borrower)	_____ (Borrower)
_____ (Date)	_____ (Date)	_____ (Date)	_____ (Date)

IN THE MATTER OF

VOLVO, INC.

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

Docket C-2421. Complaint, June 26, 1973—Decision, June 26, 1973.

Consent order requiring a Rockleigh, New Jersey, seller and distributor of a Swedish-built automobile, among other things to cease representing certain quantitative data as to the economy of its product without substantive information to support its claims; and failing to maintain adequate records.

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 Volvo, Inc., a corporation and Scali, McCabe and Sloves, Inc., a corporation and 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 Volvo, 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 Rockleigh, New Jersey.

PAR. 2. Respondent Scali, McCabe and Sloves, 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 345 Park Avenue, New York, New York.

PAR. 3. Respondent Volvo, Inc., is now, and for some time last past has been, engaged in the sale and distribution of 142, 142E, 144, 145 and 164 models of Volvo automobiles.

PAR. 4. Respondent Scali, McCabe and Sloves, Inc., is now, and for some time last past has been, an advertising agency of Volvo, Inc., and now and for some time last past, has prepared and placed for publication and has caused dissemination of advertising material, including, but not limited to the advertising referred to herein, to promote the sale of 142, 142E, 144, 145 and 164 models of Volvo automobiles.

PAR. 5. Respondent Volvo, Inc., causes the said product, when sold, to be transported from its place of business in New Jersey to

purchasers located in various other States of the United States and in the District of Columbia. Respondent Volvo, Inc., maintains, 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. 6. In the course and conduct of their businesses, respondents have disseminated and caused the dissemination of, certain advertisements concerning the said automobile 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 magazines and other advertising media, and by means of television broadcasts and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said automobile 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:

A. *Television*

1. A television commercial portrays a Swedish family in the kitchen of their home. While their young daughter is occupied at drawing a picture, the father is seated at the table with a pencil in his hand going over a ledger book containing various numerical entries and the mother is putting away the groceries. The audio portion of the commercial begins as follows:

ANNOUNCER: (Voiceover)

The cost of living in Sweden is as high as it is in the United States. But the average income is lower.

So when it comes to buying things, the Swedes are inclined to be exceedingly practical.

Especially when it comes to something as expensive as a car.

A 40% down payment is required.

A car *has* to be economical. Gasoline is 80¢ a gallon.

At this point, the father picks up a brochure for Volvo and begins going through its pages. His wife comes to look over his shoulder. They converse in Swedish, apparently about the brochure while the voiceover audio continues:

This famly could buy an inexpensive import. But their car has to hold up through many long, cold, Swedish winters.

They can't afford to buy a new car every couple of years.

So like most Swedes, they'll spend a little more and get the car that will live up to these demands.

Volvo. We build them the way we build them, because we have to.

2. A television commercial in the form of an animated cartoon depicts a house with an attached garage and a car in the garage. The car begins to take on the characteristics of a tiger-like animal as it emits a loud roar. Then it changes into a barking dog and begins eating the garage and the house. After it has eaten away half of the house, a man who has been throwing it pieces of furniture to eat gets into the car-dog and drives it away. This portion of the video is accompanied by the following narration by an off-screen announcer:

Do you sometimes get the feeling they named your old car after the wrong animal. [As the tiger changes into a dog]. Between the gas and the repairs. Has your once sleek wild animal turned into something else. [As the car-dog eats the garage, house and furniture]. Trade it in on a Volvo. [As the man gets into the car-dog and drives it away].

The scene then depicts the man returning driving a Volvo which he parks in the space where his garage was located. He begins to replace his house and garage and adds on a skylight, a swimming pool and a fence. As this is taking place, the off-screen announcer is saying:

Volvo is economical. About 25 miles to a gallon. It is also reliable. Ninety-five percent of all the Volvos registered in the United States in the last eleven years are still on the road. You can keep a Volvo a long time. Get out from under car payments. [As the house is being replaced] And put your money into additions-for-your-house payments [As the skylight is being added] Swimming pool payments. [As the swimming pool is added] And fence payments. [As the fence is added] So you don't lose everything your Volvo helped you accumulate.

The last scene shows the man's house with additions, swimming pool and Volvo in the garage surrounded by a high fence. On all sides the neighbor's houses are being devoured by car-dogs.

B. *Radio*

1. A radio commercial prepared for use by local dealers contains the following text:

When you buy a Volvo, you save on the two biggest expenses of owning a car.

The cost of repairing your car so often.

And the cost of replacing it so often.

Nine out of every 10 Volvos registered here in the last eleven years are still on the road. And any car that holds up like that, doesn't do it by breaking down.

Of course, there's no guarantee exactly how long a Volvo will last. But if you buy a Volvo, you should be able to keep it awhile, instead of going through one new car after another.

Then, after you've saved a lot of money as a result of owning your Volvo, you can make more money by selling it.

Because Volvos last longer, they, depreciate slower than most other cars. It's not unsual for five-year-old Volvos to command higher prices than some three-year-old compacts.

So if you don't want to buy a Volvo for how much it saves you, visit (*Deal name & address*).

And buy a Volvo for how little it loses you.

C. *Magazine*

1. A magazine advertisement shows a picture of a Volvo being driven past an automobile repair shop with many competing makes of automobiles undergoing mechanical repairs and the following text appears under the picture:

THE LESS YOU KNOW ABOUT CARS, THE MORE YOU NEED A VOLVO.

The cost of keeping a car up, is going up.

According to the most recent figures, Americans spend about $25 *billion* repairing cars. That's for one year.

Some automobile manufacturers are countering this problem by providing owners with free fix-it-yourself kits.

Volvo is countering this problem by trying to build cars that don't need a lot of fixing in the first place.

Volvos are tough. The design of the wheels, springs and shock absorbers have been tested the equivalent of 75,000 miles over ruts, bumps and potholes.

Volvo engines have been driven continuously for 60,000 miles at 90 mph. So the likelihood of you driving it to pieces is highly unlikely.

And the 4-wheel disc brakes never need adjustment. Or relining, because there's no need to reline them. Volvos have brake pads that can be inexpensively replaced in minutes.

These are just some of the reasons why you so rarely see a Volvo in a repair shop.

And if you do, it's probably because the guy who owns the place owns it.

2. A magazine advertisement contains the following text:

TRUE ECONOMY ISN'T MORE MILES TO THE GALLON. IT'S MORE YEARS TO THE CAR.

These days, a lot of people think the way to save a little money is to buy a small cheap car.

We agree. That is the way to save a little money.

To save a lot of money, buy a Volvo.

Volvos are built to last. While we can't guarantee how long, we do know

Volvos hold up an average of eleven years in Sweden. So once you get your Volvo paid for, you should be able to hang on to it for a few years.

Then you can bank the money you'd normally spend on car payments. Not counting interest, that's almost $1000 a year.

This is the basic difference between a Volvo and an economy car.

Economy cars are for people who are interested in economy. Volvos are for people who are interested in money.

PAR. 8. 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 respondents had a reasonable basis from which to conclude that said automobiles are substantially more economical to own and operate than competing makes of automobiles.

PAR. 9. In truth and in fact, respondents had no reasonable basis from which to conclude that said automobiles are substantially more economical to own and operate than competing makes of automobiles.

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

PAR. 10. Respondents have represented, through the use of the aforesaid advertisements and otherwise, directly or by implication, that said automobiles are substantially more economical to own and operate than competing automobiles. At the time of said representations, respondents had no reasonable basis to support said representations pertaining to the economy of said automobiles.

Therefore, the aforesaid acts and practices were, and are, deceptive or unfair.

PAR. 11. Respondent, Volvo, Inc., at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of automobiles of the same general kind and nature as that sold by respondent.

PAR. 12. The use by respondent of the aforesaid deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the purchase of substantial quantities of respondents' product. As a result thereof, substantial trade has been and is being unfairly diverted to respondent from its competitors.

PAR. 13. The aforesaid acts and practices of respondents as herein alleged, were and are all to the prejudice and injury of the

public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 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, 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 Volvo, Inc., (now known as Volvo of America Corporation) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Rockleigh, New Jersey.

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

ORDER

I. *It is ordered,* That respondent Volvo of America Corporation, a corporation, its officers, agents, representatives, employees, suc-

cessors, and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of motor vehicles in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through advertising, sales promotional material, or any other written or oral statement tending to promote the sale of motor vehicles, that any such motor vehicle is more economical, in any manner, to own, operate, or own and operate than any or all competing motor vehicles unless, at the time of such representation, said respondent has a reasonable basis for such representation which may consist of quantitative data based on a statistically valid sample, or competent scientific, engineering, cost or other similar objective data compiled by respondent or others;

2. Failing to keep adequate records which may be inspected by the Commission staff members upon reasonable notice:

a. Which contain documentation in support of any economy characteristics (as defined in Paragraph I(1) hereof) so claimed by said respondent or its agents for motor vehicles, insofar as such material is prepared, or such statement is made, by or under the direction of, or is approved (expressly or by implication) by, an officer or employee of said respondent or any of its divisions or subsidiaries; and

b. Which provided the basis upon which said respondent relied at the time such claims were made; and

c. Which shall be maintained by said respondent for so long as such material is disseminated or approved for dissemination, or such statement is made, by said respondent, and for a further period of three (3) years after said respondent's last dissemination of such material or termination of approval for dissemination of such material, or last such statement (whichever period is the longer).

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

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

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

IN THE MATTER OF

SCALI, McCABE, SLOVES, INC.

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

Docket C-2422. Complaint, June 26, 1973—Decision, June 26, 1973.*

Consent order requiring a New York City advertising agency for a seller and distributor of a Swedish-built automobile, among other things to cease representing certain quantitative date as to the economy of its client's product without substantive information to support its claims.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a

* For complaint in this matter, see p. 1851, herein.

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 Scali, McCabe, Sloves, 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 345 Park Avenue, New York, New York.

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

ORDER

I. *It is ordered,* That respondent Scali, McCabe, Sloves, Inc., ("SMS"), a corporation, its officers, agents, representatives, employees, successors, and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of motor vehicles in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

> representing, directly or by implication, through advertising or sales promotional material that any motor vehicle is more economical, in any manner, to own, operate, or own and operate than any or all competing motor vehicles unless, at the time of such representation SMS or its client has a reasonable basis for such representation which may consist of quantitative data based on a statistically valid sample, or competent scientific, engineering, cost or other similar objective data compiled by respondent or others.

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

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

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

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

IN THE MATTER OF

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., ET AL.

Docket 8866. Interlocutory Order, June 27, 1973.

Order placing administrative law judge's subpoena directed to the Secretary of the Commission on the Commission's docket for review; quashing said subpoena insofar as it directs the appearance and production by the Secretary; quashing the first sentence of Paragraph F of the definitions contained in said subpoena and also Paragraph 2 of the subpoena; and returning the subpoena to the administrative law judge for further action consistent with the Commission's opinion and order.

ORDER PLACING ADMINISTRATIVE LAW JUDGE'S SUBPOENA DIRECTED TO THE SECRETARY ON THE COMMISSION'S DOCKET FOR REVIEW AND QUASHING THE SAME IN PART

The Secretary of the Commission has been served with a subpoena *duces tecum* issued May 30, 1973, by the administrative law judge pursuant to the judge's ruling of April 17, 1973, and May 17, 1973, on a motion by respondent Borden, Inc., under Section 3.36 of the Commission's Rules of Practice. The subpoena directs, in part, that the Secretary appear before the judge on July 2, 1973, and produce certain specified records of the Commission. It also directs, under certain provisions of the subpoena, that the Secretary identify or list other records of the Commission which are not to be produced under the subpoena.

The Commission, pursuant to Section 3.23(a) of the Commission's Rules of Practice, has determined to place this subpoena on its own docket for review. The scope of this review will be limited to the following issues: (1) Whether, under the circumstances in this case, it is necessary that the response to the subpoena be made by the Secretary of the Commission rather than by complaint counsel; and (2) The appropriateness of the subpoena provisions which require the identification or listing of certain Commission records which are not to be produced in response to the subpoena. Each issue is hereinafter discussed *seriatim*.

I. APPEARANCE AND PRODUCTION BY THE SECRETARY

It is clear from the record that since this proceeding began complaint counsel have made an extensive effort to search Commission files in order to locate any material which could be considered discoverable by respondent. Much material already has been turned over to respondent by complaint counsel. What little remains to be produced under the instant subpoena is in complaint counsel's possession and requires no further search of the Commission's files. Accordingly, no point is served in requiring the Secretary of the Commission to appear and make the return. This function can, under the circumstances, be performed adequately and appropriately by complaint counsel.

II. PROVISIONS REQUIRING IDENTIFICATION OR LISTING OF COMMISSION RECORDS

1. Paragraph F, Definitions Section of the Subpoena

It is noted that Paragraph F of the definitions section of the subpoena contains the following first sentence:

> If any requested documents are deemed privileged or otherwise not subject to subpoena as internal Commission communications, Commission minutes, staff memoranda and staff work product, such documents shall be identified.

By his ruling of April 17, 1973, the judge denied Borden's motion for discovery insofar as it called for items such as internal Commission communications and staff work product.[1] His ruling to that extent is clearly consistent with prior Commission decisions.[2] But his ruling contains no explanation or justification for the inclusion of the above-quoted first sentence of Paragraph F. As far as we can determine, it is the result of a compromise over a more elaborate provision which appeared as the first sentence of Paragraph F of the definitions in the proposed subpoena specifications submitted by Borden with its motion for discovery dated February 9, 1973. This earlier provision would have required each such document to be identified by source, date, author and specific type of information contained therein and a separate statement of grounds on which the claim or privilege as to each document rested. In support of this earlier provision, Borden

[1] Order on Motion of Borden, Inc., for a Subpoena Directed to the Federal Trade Commission, dated April 17, 1973, at pp. 3–6.

[2] *See* for example, *School Services, Inc.*, 71 FTC 1703 (1967); *Statesman Life Insurance Co.*, 70 FTC 1835 (1966); *Sperry & Hutchinson Co.*, 69 FTC 1112 (1966); *Modern Marketing Services, Inc.*, 69 FTC 1077 (1966); *Graber Manufacturing Co. Inc.*, 68 FTC 1235 (1965).

argued that it was necessary to "permit an informed ruling by the Judge and an adequate record on appeal." [3] We disagree. The administrative law judge's April 17 ruling makes it clear precisely what types of documents respondent has been denied discovery of, namely internal Commission communications and staff work product. Those rulings constitute an adequate record on appeal, and we see no need for burdening the Commission with having to identify each such item. Accordingly, the first sentence of Paragraph F of the definitions section of the subpoena shall be quashed.

2. Paragraph 2 of the Subpoena Specifications

Paragraph 2 of the subpoena specifications calls for:

> A listing of documents containing 1963–1968 Chicago market or price information obtained in the investigation of Southland Corporation by category or by title and by date and time period covered.

According to the record, respondent Borden already has obtained voluntary discovery from Southland Corporation.[4] The administrative law judge included the above-quoted provision in the subpoena so as to afford the respondent an opportunity to compare what it has received voluntarily from Southland with what the Commission has obtained in connection with a current, ongoing investigation of that corporation. This procedure, however, imposes a burden upon the Commission which is not authorized by the Commission's discovery rules. If respondent has reason to believe that Southland's voluntary disclosure is incomplete, a conclusion not evident from the record before us, the appropriate solution would be a subpoena directed to Southland, not to the Federal Trade Commission. Accordingly,

It is ordered, That the subpoena *duces tecum* issued May 30, 1973, upon the Secretary of the Commission, be, and it hereby is, placed on the Commission's docket for review.

It is further ordered, That said subpoena insofar as it directs the appearance of, and production by, the Secretary of the Commission, be, and it hereby is, quashed.

It is further ordered, That the first sentence of Paragraph F of the definitions contained in said subpoena, be, and it hereby is, quashed.

It is further ordered, That Paragraph 2 of said subpoena, be, and it hereby is, quashed.

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[3] Motion of Borden, Inc., for Subpoena Directed to the Federal Trade Commission, dated February 9, 1973, at p. 6.

[4] Response in Support of Borden's First Motion for Subpoena Directed to the Federal Trade Commission, dated April 5, 1973, at p. 8.

It is further ordered, That said subpoena be, and it hereby is, returned to the administrative law judge for further action consistent with this opinion and order.

Legality of a proposed cumulative refund plan whereby distributors would earn refunds on amounts paid to the supplier if the distributor increases quarterly purchases over those in the corresponding quarter in the immediately preceding year. (File No. 733 7003)

Opinion Letter

January 11, 1973

Dear Mr. Breeling:

This is in response to your letter request dated October 24, 1972, for an advisory opinion.

It is the Commission's understanding that Scott Publishing Company has devised a cumulative refund plan. In essence, under the plan, Scott distributors would earn a refund on amounts paid to Scott if the distributor increased his quarterly purchases over those in the corresponding quarter in the immediately preceding year.

All distributors of Scott's stamp albums, album supplements and accessories would be enrolled and advised as to how the plan would operate; however, their purchases of Scott's standard stamp catalogs and related items would not be covered under the plan.

If a distributor's purchases from Scott increased over the corresponding quarter in the immediately preceding year, percentage refunds would be offered him on the following basis:

Quarterly Increase	Quarterly Refund
20%	2%
30%	3%
40%	4%
50%	5%

Retail outlet customers buying direct from Scott would not be included in the plan.

It is the Commission's opinion, based on its understanding as outlined above and the available information, that the plan

raises questions under the Robinson-Patman amendment to the Clayton Act in that the price discriminations which would necessarily result from its implementation may have the effect of substantially lessening competition among your distributors. Price discriminations which may adversely affect competition are prohibited by Section 2(a) of the Clayton Act, as amended, unless they are justified by savings in cost or unless the lower price is made in good faith to meet the equally low price of a competitor.

The Scott plan arbitrarily categorizes distributors on the basis of a percentage increase in sales bearing no relationship to Scott's lower cost in doing business with a distributor. For example, if competing distributors, "A" and "B," each purchased $1,000 worth of merchandise during a given quarter of the year and this represented a 50% increase for distributor "A" and only a 20% increase for distributor "B," the latter would get a 2% rebate while the former would receive a 5% rebate. Such differentials between competitors, absent a cost justification, are illegally discriminatory if the requisite adverse effects on competition are found.

You are advised further that the Commission is of the view that a legally inoffensive incentive program might be devised under which all resellers are treated alike, *e.g.*, all of those with an increase in volume over a given base period receive the same percentage refund and new entrants are allowed to qualify.

By direction of the Commission.

Letter of Request and Enclosure

October 24, 1972

Dear Sir:

Enclosed is a detailed factual sketch of a proposed incentive program which Scott Publishing Company intends to initiate as soon as, and if, a favorable response to this request is issued.

If any further information is needed, please contact me by telephone (collect) and I will immediately make it available to you. The plan is not presently in effect and, to the knowledge of the corporation and this office, it is not the subject of investiga-

tion or any other proceeding by the Commission or any other governmental agency.

Thank you.

Sincerely yours,

/s/Roy G. Breeling

CORPORATE INFORMATION

Scott Publishing Company is a Nebraska corporation with its registered office and corporate headquarters at 10102 "F" Street, Omaha, Nebraska, 68127. The sole stockholder of Scott is Mr. Duane Hillmer of Omaha, Nebraska. The Board of directors is composed of Mr. Duane Hillmer, Chairman; Mr. Carl Mammel; Mr. R. R. Nantkes; and Mr. Jack Taub. The corporate officers are Mr. Duane Hillmer, President; Mr. R. R. Nantkes, Vice President; Mr. Henry Eberley, Vice President, Mr. Jack Taub, Vice President; Mr. Morton Fisher, Secretary; Mr. Jack Taub, Assistant Secretary; and Mr. Morton Fisher, Treasurer.

Scott owns more than 80% of Epsen Lithographing Company. Espen is not engaged in activities related to the business of Scott.

BUSINESS INFORMATION

Scott is engaged in the supplying of information and materials for stamp collectors. The annual sales of the corporation in the fiscal year 1971 amounted to $1,681,873. Scott products include two somewhat distinct lines of products. Scott publishes and produces a three-volume set of Standard Catalogues. These catalogues are generally recognized as a major authority by which stamp prices are determined not only in the United States, but in a number of foreign nations. Supplementary to these Standard Catalogues, which are produced on a yearly basis and released in the Fall of the year, are monthly journals which update and correct the Standard Catalogues. Also, Scott, publishes a coin catalogue, but this is a minor part of its business. The sales of these items are relatively stable and it is not anticipated that the incentive program hereafter set forth will apply to these sales. Of the annual sales figure noted above, approximately $832,740 was derived from sales of the Standard Catalogues and related items.

The other line of products produced by Scott is stamp collecting supplies and accessories. This line includes stamp albums in which stamps are to be placed, yearly supplements to these albums, accessories, special albums, etc. These sales amount to $843,133 annually. Approximately $6,000 is derived annually from the sale of advertising space in the monthly supplement to the Standard Catalogues.

The majority of the annual sales of Scott is to distributors, who perform a wholesaler function. However, Scott does sell directly to retailers and individuals, especially in geographical areas where no distributor conducts business on a regular basis. Sales to such retail outlets are generally competitive in price with prices offered by distributors. Such direct sales

during the last fiscal year amounted to approximately $126,000, or about 7% of Scott's total sales.

The following are the state locations of distributors, the number of distributors in each state, the total volume of sales into such state, and a breakdown between the two lines of product sales into each state.

CHART I

State	(a) Number of Distributors	(b) Total Volume of Sales	(c) Standard Catalogue Sales	(d) Materials and Accessory Sales
Alabama	1	$ 36,073.98	$ 15,417.88	$ 20,656.10
California	4	242,761.31	$117,475.62	$125,285.69
Florida	2	32,911.36	$ 16,477.55	$ 16,433.81
Illinois	2	126,352.75	$ 65,945.30	$ 60,407.45
Indiana	2	80,779.73	$ 35,052.88	$ 45,726.85
Kansas	1	13,011.76	$ 4,927.00	$ 8,084.76
Maine	1	11,103.81	$ 5,380.38	$ 5,723.43
Massachusetts	2	108,480.21	$ 28,448.21	$ 80,032.00
Michigan	1	31,282.58	$ 13,539.91	$ 17,742.67
Minnesota	1	45,783.12	$ 36,614.48	$ 9,168.64
Nevada	1	8,147.76	$ 6,822.31	$ 1,325.45
New Jersey	1	13,502.47	$ 11,843.87	$ 1,658.60
New York	10	591,289.73	$327,420.17	$263,869.56
Oklahoma	1	11.53	$ 11.53	$ —
Pennsylvania	1	34,140.57	$ 14,524.42	$ 19,616.15
Texas	2	34,119.30	$ 13,439.26	$ 20,680.04
Virginia	1	5,352.60	$ 1,803.73	$ 3,548.87
Wisconsin	1	18,726.79	$ 3,622.86	$ 15,103.93
Canada	1	83,995.18	$ 62,482.76	$ 21,512.42
TOTAL DISTRIBUTOR SALES		$1,517,826.54	$781,250.12	$736,576.42

To the knowledge of Scott, most of the distributors in each of the states above are unrelated. However, one distributor has related operations in five (5) states; another in three (3) states; and one in two (2) states. Thus, the actual total number of distributors is twenty-nine (29). The total number of distributors on a state by state basis without reference to related business operations is thirty-six (36) as shown in Chart I.

Since the Scott incentive refund program will involve only those sales figures shown in column (d) of the chart, the following is a breakdown of those sales.

CHART II

Annual Sales Volume	*Number of Distributors*
Up to $ 1,000	1
$ 1,000 to $ 10,000	8
$ 10,001 to $ 20,000	8
$ 20,001 to $ 30,000	6
$ 30,001 to $ 40,000	1
$ 40,001 to $ 50,000	0
$ 50,001 to $ 60,000	3
$ 60,001 to $ 80,000	0
$ 80,001 to $ 90,000	1
$ 90,001 to $130,000	0
$130,001 to $131,000*	1
TOTAL	29**

* These sales were to a distributor operating facilities in three states.

** The sales figures of each of the distributors with multi-state facilities are grouped together as to that distributor and inserted into the appropriate sales volume category.

The lowest dollar volume purchaser among the distributors, considering related distributors as single operations, of non-catalogue sales (column (d) of Chart I) had purchases amounting to approximately $950. Distributors range up to approximately $130,960 for one multi-state distributor. The average volume of the 29 distributors is $25,399.19.

The larger-volume distributors tend to deal with a different clientelle than the smaller-volume distributors, although there is undoubtedly some competition between them. The larger-volume distributors tend to deal primarily with larger retail outlets while smaller-volume distributors generally deal with individual retail stamp shops.

THE PRODUCT

As previously mentioned, the present management of Scott does not feel that an incentive program could significantly improve business in the area of the sales of Standard Catalogues and related items. Thus, the incentive program hereinafter set forth will apply solely to sales of albums, album supplements and accessories. The sales figures for those items are set forth in column (d) of Chart I and are the basis for categorization in Chart II.

The problem which has arisen to cause Scott to seek to initiate the incentive program is stagnant sales in albums and related items. Scott sells a complete line of "high line" albums. These stamp albums use top grade paper stock and are of high quality materials and workmanship. Only one other album manufacturer produces a high line album but little direct competition exists between Scott and this manufacturer because the other manufacturer sells directly to large retail outlets (i.e. department store chains). The other competitors of Scott sell "low line" albums. Scott's high-line prices are higher than its competitor's low-line prices.

Scott also produces an incomplete line of "low line" albums. Scott's prices on these low-line albums are somewhat above the price level of its competitors' low-line albums.

For explanatory purposes a "complete line" of albums means that the albums offered generally cover all countries and allow for the collection of all or nearly all of the stamps of said countries. An "incomplete line" means that not all countries and/or not all stamp issues of said countries are covered by the albums offered for sale. A "low line" album is produced from less expensive paper stock, has a less substantial binding, and is, perhaps, less complete and colorful. Also, the stamp holders in such album may not provide the degree of protection and fullness of view that one would find in a high-line album.

THE PROGRAM

Scott intends to offer an "incentive refund program" to all of its distributors upon the sale of those items represented by the sales figures in column (d) of Chart I. The product items included in those figures and, the items in the incetive program will be the same for every distributor. In other words, there will be no instance where sales of Standard Catalogues are included within one distributor's sales figures under the incentive program while not being included in another distributor's sales figures.

The incentive refund program offers an increasing scale of cash refunds for increasing levels of percentage increase in sales over and above a given base period. Each year will be divided into quarters of three calendar months. Comparison will be made between the current quarter's sales and those of the corresponding quarter of the immediately preceding year. The percentage increase in sales, if any, will then be computed for the current quarter and, if the sales have increased from the previous year's quarter sales by a given percentage, a set cash refund will be paid to the distributor.

The following percentage refunds are proposed to be offered in the incentive program:

CHART III

Percentage Increase In Sales Volume	*Percentage Refund For Quarter*
20%	2%
30%	3%
40%	4%
50% or More	5%

Example A

If Company X, a distributor handling Scott products, had sales in the first quarter of 1972 of $10,000 and attained the sales level of $12,000 during the first quarter of 1973, it would be entitled to an incentive refund of 2% of its $12,000 in 1973 first quarter sales—a sum of $240.

Computations:

First Quarter 1973 Sales	$12,000
First Quarter 1972 Sales	$10,000
Increase	$ 2,000

Percentage Increase $= \frac{\$\ 2{,}000}{\$10{,}000}$ or 20% entitling Company X to a 2% incentive cash refund.

Example B

If Company X had sales in the first quarter of 1972 of $10,000 and attained the sales level of $11,900 during the first quarter of 1973, it would not be entitled to any incentive refund because of the failure to attain the 20% increase bracket.

Computations:

First Quarter 1973 Sales	$11,900
First Quarter 1972 Sales	$10,000
Increase	$ 1,900

Percentage Increase $= \frac{\$\ 1{,}900}{\$10{,}000}$ or 19%, not entitling Company X to an incentive refund.

The program presently does not anticipate that a failure to reach the base quarter's sale figure in one quarter will have any effect on the next quarter's incentive refund. However, if it becomes a common practice of distributors to hold back purchases in one quarter and dump those sales into another quarter to receive the incentive refund, the corrective measures outlined below *may be* instituted.

Example C

If Company X had sales of $10,000 in the first quarter of 1972 and sales of $7,000 in the first quarter of 1973; sales of $10,000 in the second quarter of 1972 and sales of $13,000 in the second quarter of 1973, Scott will require (*provided* it feels distributors are attempting to lump sales into quarters where they do not belong) the distributor to make up the difference between the base quarter sales and first quarter sales of 1973 before sales count toward an incentive refund. In this example, Company X would show no increase in sales for the second quarter of 1973.

Computations:

First Quarter 1972 Sales	$10,000
First Quarter 1973 Sales	$ 7,000
Decrease	$ 3,000
Second Quarter 1973 Sales	$13,000
Second Quarter 1972 sales	$10,000
Increase	$ 3,000

Offset:	
Second Quarter Increase	$ 3,000
First Quarter Decrease	$ 3,000
Adjusted Second Quarter Increase	0

If such corrective measures are deemed necessary by Scott, they will be applied to all distributors and become an irrevocable and non-waivable part of the incentive program. No distributor will be allowed to obtain a refund if it does not make up its decrease for the preceding quarter.

Scott does not intend to cause decreases for quarters, other than the immediately previous quarter, to effect current quarter incentive availability.

Example D

If Company X has the following sales history during the first three quarters of 1972:

First Quarter 1972 Sales	$10,000
Second Quarter 1972 Sales	$10,000
Third Quarter 1972 Sales	$10,000

and attains the following sales levels during the first three quarters of 1973:

First Quarter 1973 Sales	$ 6,000
Second Quarter 1973 Sales	$13,000
Third Quarter 1973 Sales	$13,000

and the corrective enactment of this phase of the program has been instituted, the following incentive refunds will have been paid to Company X at the close of each Quarter:

1. First Quarter 1973

First Quarter 1972 Sales	$10,000
First Quarter 1973 Sales	$ 6,000
Decrease	$ 4,000

(No incentive paid)

2. Second Quarter 1973

Second Quarter 1973 Sales	$13,000
Second Quarter 1972 Sales	$10,000
Increase	$ 3,000

Offset:	
First Quarter *Decrease*	$ 4,000
Second Quarter *Increase*	$ 3,000
Adjusted *Decrease* Second Quarter	$ 1,000

(No incentive paid)

3. Third Quarter 1973

Third Quarter 1973 Sales	$13,000
Third Quarter 1972 Sales	$10,000
Increase	$ 3,000

Percentage Increase $= \frac{\$\ 3{,}000}{\$10{,}000}$ or 30% entitling Company X to a 3% incentive refund for the third quarter ($390).

As noted in the example above, Company X was not entitled to an incentive for the second quarter of 1973 because of the decrease which occurred in the first quarter. However, the fact that the second quarter sales did not fully cover the first quarter decrease had no effect on the third quarter computations.

All dates of recording of orders as to the quarter in which the sales will be recorded will be uniform as to all distributors and the policies in relation to the program will be published and made available to all distributors.

CONCLUSION

Scott feels that the program outlined herein offers an incentive to increase sales which is factually as well as theoretically available to all distributors on an equal basis. It is not the intent of Scott to discriminate in any way against any distributor or class of distributors. Scott requests a favorable ruling in the advisory opinion from the Commission.

Marketing and labeling practices in connection with forming a business enterprise for the purpose of manufacturing and selling a product called "copy cloth." (File No. 733 7004).

Opinion Letter

February 9, 1973

Dear Mr. MacDonald:

This is in response to your letter of August 31, 1972, requesting an advisory opinion on behalf of your clients, W. James and Barbara Neill, as to whether Copy Cloth, a loosely woven cotton material impregnated with wax, falls within the purview of the Flammable Fabrics Act, the Fair Packaging and Labeling Act, or the Textile Fiber Products Identification Act, or whether any of your clients' marketing or labeling plans violated the Federal Trade Commission Act.

It is the Commission's understanding that the material is to be used for making master patterns for clothing, upholstery, etc. When heated to a temperature of 130 to 150 degrees Fahrenheit, Copy Cloth becomes pliable and may be molded to the body or to any other contoured surface. After it has cooled it can be removed, flattened by making appropriate slits in the material, and used as a model for a paper pattern. This, you have advised, saves much time and many errors in measuring the surface directly.

The marketing aspects of your clients' proposed plan are not explained in sufficient detail to provide the basis for issuance of an advisory opinion. Therefore, your request will be denied pursuant to Section 1.1 (c) of the Commission's Rules of Practice.

By direction of the Commission.

Second Supplemental Letter Relative to Request

November 7, 1972

Inre: Copy Cloth Advisory Opinion Request

Dear Ms. Cavanagh:

Attached for your file is a copy of the Report of Test Number

LA–60913 dated November 3rd, 1972 conducted by United States Testing Company, Inc.

Said test report concludes that COPY CLOTH, ". . . . . meets the requirements of the Flammable Fabrics Act, and is considered suitable for wearing apparel use."

As you know, the aforesaid testing was accomplished for our own information only and we still contend that COPY CLOTH and its use is not within the scope of said Act nor subject to regulation thereunder.

To more fully explain our position, the term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals (see Section 1191(d) of the 1967 amendment to the Act). In part, this amendment eliminated the prior exceptions of hats, gloves and footwear from the definition of "wearing apparel."

The legislative history reveals that the need for the legislation, as to wearing apparel, arose from the wearing of highly flammable cowboy playsuits and the so called torch or explosive sweaters.

The catalog of tragedies and near tragedies in the congressional hearings by Dr. Fredric Bonnet, the National Fire Protective Association and others included tulle dress, plastic raincape, costume at lodge entertainment, grass dress, three (3) childrens costumes, bathrobe, pajamas, pants and various other articles of ordinary clothing and clothing accessories.

Inasmuch as said Act expressly limits the meaning of the term "article of wearing apparel" to any costume or article of clothing, the said legislative history reveals the congressional intent in enacting the Flammable Fabrics Act and aids in interpretation of the above limitation. In part we submit that said Act express terms as well as the legislative history circumscribes the meaning of "article of wearing apparel" so as to exclude COPY CLOTH or its uses from operation of said Act or regulations.

COPY CLOTH is never intended to be worn as a costume or clothing. It is a pattern material applied to only part of a person's body at a time by another, e.g. one half bodice, one sleeve, at a time, etc. Within minutes of application, COPY CLOTH becomes a semi-rigid mold, is marked and removed from that part of the body, reduced from three dimensional to planar form for subsequent pattern making sequential steps.

The Presidential message giving rise to said amendment to the Act in 1967 called for legislation to keep "extremely flammable clothing out of the nation's stores" . . . . . "current law does

not cover many articles of clothing which can be consumed by fire instataneously," (see Wilfred H. Rommel letter to Hon. Harley O. Staggers of April 4th, 1967).

The Attorney General's letter to Hon. Staggers of April 5th, 1967 states in part, "The bill implements the recommendations contained in the President's message."

The 1967 legislative history reveals that the intended victims to be protected by the Act, "are very largely concentrated among the very young and the aged. The former often have not learned the significance of what is happening to them; the latter often suffer from disabilities and cannot protect themselves rapidly enough."

We submit that COPY CLOTH or its uses are not within any reasonable definition of the language used in the said Act which is even more clearly made evident when considering the provisions of the Act in the context of the legislative history and Presidential statements at the time of enactment.

We trust that the above brief outline satisfactorily describes at least the nature of our thinking as to these matters. It was our aim to give a reasonable interpretation to the documents reviewed.

In a spirit of cooperation and with respect to this particular situation, subject to reservation of our position stated hereinabove, we are pleased to make the aforementioned test report available to you.

It is our understanding that within the next few days you will recommend to the Commision that a favorable advisory opinion issue with respect to COPY CLOTH, its uses and our proposed course of action.

We appreciate the attention you have given to this matter and request to be advised at the earliest possible date of the advisory opinion and its content.

Very truly yours,

/s/ John N. MacDonald

First Supplemental Letter Relative to Request

October 6, 1972

Dear Ms. Cavanagh:

This letter is in response to your September 14th letter of inquiry.

This office has discussed the questions contained in your letter at length with our clients. It is our desire to answer each of your questions fully, limited only to the extent of not revealing proprietary information or trade secrets.

We trust that the answers attached hereto as an enclosure are satisfactory to fulfill your needs. The answers are organized in the same number sequence you ascribed to the corresponding question in your letter of September 14th.

We greatly appreciate the attention you have given to this matter.

Very truly yours,

/s/ John M. MacDonald

REPORT OF TEST

CLIENT: Copy Cloth Corp.
815 Centinella Ave.
Santa Monica, Ca. 90403

NUMBER
LA–60913
11–3–72

SUBJECT: One (1) sample gauze, submitted and identified by Client as impregnated with wax.

Reference: Telecon with W. James Neill, 10–30–72.

Object: To determine whether or not the submitted sample meets the requirements of the Flammable Fabrics Act, in original state only.

Apparatus and Procedure: The apparatus and methods of testing were those described in Commercial Standard for Flammability of Clothing Textiles CS–191–53, to which the Flammable Fabrics Act refers. Due to the wax coating on the samples, the oven drying (221° F) procedure was omitted and samples were allowed to dry out overnight in a dessicating cabinet at approximately 5% relative humidity, room temperature.

Page 2 of 2

Number
LA–60913
11–3–72

REPORT OF TEST [continued]

Test Results:

Flammability, Rate of Burning, Seconds
ORIGINAL CONDITION

	DNI*
	DNI
	DNI
	DNI
	DNI
Average	DNI

*DNI—Did Not Ignite—Specimen not ignited to Standard 1-second flame impingement.

SIGNED FOR THE COMPANY
BY
/s/ S. N. Burmer /s/ K. Heywood

Classification (original state only)

Class I—Normal Flammability

The sample reported herein meets the requirements of the Flammable Fabrics Act, and is considered suitable for wearing apparel use.

Comments:

Due to the modification in drying procedures, the following additional studies were made. The flame source was held down until ignition after the one-second impingement. All samples were found to ignite between 1.3 and 1.6 seconds.

ANSWERS TO FTC QUESTIONS—COPY CLOTH

1. Have actual tests for flammability, durability, etc., been made of COPY CLOTH? Please explain procedure and results of any such tests.

As to flammability: The actual tests for flammability were simple experimentation burning samples of COPY CLOTH and the loosely woven all cotton fabric used in COPY CLOTH simultaneously. Such tests were conducted in an open indoor area at average ambient temperature and humidity conditions found in the home and industrial work areas where pattern making is usually carried on. Extensive testing as described in the Flammable Fabrics Act and Regulations was not attempted because we submit that COPY CLOTH is not within the scope of said Act or Regulations, i.e. it is not either wearing apparel nor interior furnishing, fabric nor related material as defined therein.

Observations from such testing were that the wax acted as an inhibitor, i.e. markedly decreasing the rate of burning of COPY CLOTH as against the all cotton fabric. The burning intensity of COPY CLOTH and the all cotton fabric appeared the same.

Therefore, we believe that COPY CLOTH does not present any unreasonable hazard when used in the home environment or industrial areas as against other fabrics, materials and products generally available in the open market place.

The risk of flammability of COPY CLOTH in use is minimal. We do propose to advise the ultimate user in the instructions for use of the product, to use the recommended methods of heating COPY CLOTH described in paragraph 2.3 on the bottom of page 4 and continuing on page 5 of the memorandum from us to you dated August 31st, 1972, i.e. heating by use of hot tap water, the lowest setting on a conventional household iron, etc. In testing using the recommended methods of heating COPY CLOTH, but substantially exceeding 130 degrees Fahrenheit, the recommended heating temperature, it was observed that the wax was either absorbed into the cotton fabric which forms part of COPY CLOTH or drained off harmlessly.

As to durability: In repeated use we have found COPY CLOTH is very durable and may be reused. COPY CLOTH may be folded many times and restored to its original smooth finish when warmed according to instructions, i.e. by said recommended heating methods. If a mistake is made in use, e.g. a wrong line drawn, etc, one may start over again simply by reheating the COPY CLOTH as recommended.

2. What are the chemical composition and properties of "petroleum wax?" How does it differ from paraffin? Please provide the name of the manufacturer.

We do not intend to use the term "petroleum wax" with respect to or describing COPY CLOTH in any instructions literature or advertising.

The criteria for wax selection requires FDA approved wax used generally for household purposes and the characteristics specified in our memo of August 31st, i.e. a softening temperature of approximately 130 degrees Fahrenheit, is relatively hard and non-elastomeric at approximately 100-110 degrees Fahrenheit, etc. In a generic sense, paraffin is the class within which the wax in COPY CLOTH would fall, e.g. it is not easily acted upon by reagents, obtained chiefly from crude petroleum and used for making various household products such as candles, forming preservative coatings, waterproofing paper, etc.

We purchase the wax used in manufacture of COPY CLOTH in accordance with the above criteria from the market place and do not alter its chemical composition or properties. The precise wax in COPY CLOTH was discovered only after extensive experimentation and expenditure of funds by us and is considered a trade secret. We believe you will understand that such secret information used in the conduct of our client's business which is of some competitive advantage to him, and which is not disclosed to the public or anyone, must not be disclosed in order to protect and preserve the equitable theory of protection.

3. Please explain the assertion that "its burning rate approximates that of a common household candle".

COPY CLOTH is not combustible, it burns slowly. As stated in response to 1 above, the wax acts as an inhibitor to burning COPY CLOTH. The analogy to candle burning seems germane and within the common experience of everyone. No testing with candles was conducted.

4. Is the product aimed principally at the home seamstress, the professional seamstress, or industry?

It is aimed equally at all of them. The product is for the home seamstress, professional dressmaker, design schools, and a myriad of industrial pattern applications. It is particularly useful for asymmetrical figure fitting problems and patterns for other complex three dimensional articles without measurement or dimensioning.

By way of example and not by way of limitation, COPY CLOTH enables one to drape a design in third dimension directly on the body as well as make an accurate semi-mold simultaneously to be used as a basic block for flat pattern drafting. One may thereafter adapt commercial dress patterns to the peculiarities of her own body configuration with the use of her COPY CLOTH master pattern block. COPY CLOTH may also be cut larger than, but from commercial pattern pieces of a pattern to be made, correcting any fitting problems when molded to the body, pinned marked along original lines in third dimension.

5. What price do your clients intend to charge for COPY CLOTH? Will a price be suggested for resale? If so, what?

Our clients intend to charge from $1.00 to $1.50 per yard (36 inch width) as a function of quantity purchased per order. The suggested retail price is $2.98 per yard.

6. What yardage of COPY CLOTH would be necessary to fit a complete garment (e.g. the longsleeved dress in the brochure)?

We recommend two (2) yards.

7. Who will receive the elegantly printed brochure? Will it or something comparably elaborate be available to the ultimate consumer? Will it cost extra?

For the home seamstress or dress/garment designer, amateur or professional, a free data sheet entitled, "COPY CLOTH * * * Now it's a whole new world of sewing-your very first step is COPY CLOTH!" is available and shall be at all places where COPY CLOTH is sold. A proof sheet of said data sheet is attached [p. ——— *infra*]—it shall be amended to include heating methods stated in our August 31st memo to you and flammability statement in bold face or contrasting type face. Similar data sheets for industrial users have not yet been composed, but we intend to provide them as the market uses develop.

The brochure, "Introduction to COPY CLOTH" is the first manual for using our totally new method of pattern drafting. We intend a sales price of $2.98 for it and it shall be available wherever COPY CLOTH is sold to the ultimate consumer.

8. How will your clients assure that part of the paper tape will be given to and will be read by the ultimate consumer? Will it be affixed to COPY CLOTH or simply rolled with it? It would, furthermore, be helpful if we could see a projected sample of the paper tape (your description, Section 4 in the memo, asserts the inclusion of a vast amount of information).

The tape will be affixed to the core of the bolt roll and be rolled

along the median line the length of the Copy Cloth roll. During the intervening period since August 31st we have determined that rotary press printers can produce plastic tapes of 18 inch widths and greater to be rolled in the above described manner with COPY CLOTH on the bolt. Information in form of text and illustrations similar to the concise information on the data sheet under 7 above shall be printed each quarter yard which is the anticipated minimum quantity sold.

A survey of retailers in the Los Angeles area indicates that separate sheets are rarely given to the ultimate consumer by sales persons, but that a tape of information rolled in the bolt and cut with the material will not be overlooked by sales people and will be included with the product purchased. The retailer shall also be instructed to give the information tape insert cut from the bolt to the ultimate consumer. We know of no practical manner that any manufacturer can assure that the ultimate consumer will read or understand instructions and other data given him at the time of purchase.

A copy of the tape is not available at this time.

9. Is the "muslin fitter" (brochure p. 18) necessary to the proper construction of a garment using COPY CLOTH? If so, please explain why the COPY CLOTH process is superior to the mere fitting of a muslin "preview" garment.

A muslin fitter should always be made of any COPY CLOTH or conventionally drafted pattern because any changes desired is accomplished on inexpensive muslin rather than upon expensive garment fabric.

A pattern drafted by conventional means requires a series of over ninty measurements to make a basic block, e.g. front and back bodice, front and back skirt, sleeves: See reference book "Pattern Drafting and Graphing Womens and Misses Garment Design," M. Rohr, Rohr Publishing Co., P.O. Box 88, Waterford, Conn. 06385. Mr. Rohrs book is used as a standard text in California public adult vocational classes. Weeks of personal instruction in class is required to acquire the rudiments of measurements alone.

COPY CLOTH methods avoid such dimensioning or measurements. The COPY CLOTH pattern method is the only way today to make an individually fitted garment *without measurement* or *grading* for any garment.

Muslin, if used alone, is a two dimensional fabric which can take weeks of fitting to assure proper fit or to test the success of any given design.

COPY CLOTH makes an actual *third dimensional, semi-rigid mold,* of any part of the body or other complex article, e.g., See pp. 6–fig 9, 10–fig 18, 13–all figures, in brochure previously provided to your office.

10. Please explain reference (brochure p. 1) to "COPY CLOTH classes." What are their terms, format, description? Are they useful or necessary to seamstress purchasers of COPY CLOTH? If so, do your clients warrant its "speed and simplicity" as used by less-than-expert home seamstress, without attendance at the classes?

In conducting initial market research we have found:

A. COPY CLOTH classes are requested by accredited home economics teachers in Junior and Senior high schools, adult extension, university level, expert free-lance sewing and pattern teachers, trade school, professional dress makers as well as home seamstresses, and

B. Home use by relatively unskilled persons who have not attended any

COPY CLOTH class has been successful by the user simply following the concise data and instructions on the data sheet and brochure, "Introduction to COPY CLOTH".

In pilot studies of COPY CLOTH use, men who don't sew, have made a perfect fitting bodice with COPY CLOTH on their first try.

We understand that the format for classes for the home seamstress and home economics classes shall follow the text of the brochure, "Introduction to COPY CLOTH". Class fees vary, but are nominal.

We do not warrant "speed and simplicity" which seems to be self evident, e.g. see answer to question 9 above.

11. What are "established commercial representatives" (memo p. 6)? Salesmen hired by COPY CLOTH? Drummers selling other companies' fabrics? Wholesale fabric distributors?

Our stated methods of distribution of COPY CLOTH are merely a statement of future plans. We have been and are conducting initial discussions with wholesale distributors and chain stores with as little as a dozen stores in a single metropolitan area to one as large as having sewing centers in virtually every American city. Some of said discussions have entered a more formal negotiating stage, but we cannot as yet reveal the identity or other details as to any such matters.

We shall only resort to the use of salesmen hired by COPY CLOTH if other methods of distribution are not realized or successful.

12. If COPY CLOTH is "even easier to handle" (brochure p. 24) on the bias, why not manufacture it that way?

COPY CLOTH is not manufactured on the bias because it would be too expensive, greatly increasing the price to the ultimate consumer. For this reason, almost no fabric materials are woven on the bias.

The ultimate consumer may, if desired, cut and mold COPY CLOTH on the bias or straight of the goods, for the desired effect.

13. Are the Neills currently engaged in a related business, company, or corporation? Or is this an entirely new entrepreneurial venture?

This is a new entrepreneurial venture. The Copy Cloth Corporation was incorporated in accordance with the laws of California on September 20, 1972.

COPY CLOTH . . .

1. Mark the body with removable eyeliner or eyebrow pencil (a step that may be omitted later as your skill progresses).
2. Warm Copy Cloth between layers of aluminum foil with iron on lowest setting—or—on foil or foil pan. (NEVER overheat or heat with open flame.)
3. Mold to any part of the body—bodice, sleeve, skirt or even pants.
4. Trace the markings from the body and mark dart and style lines.
5. Trim Copy Cloth on body marking lines and split on dart lines. (Darts may also be folded out and fold clipped away.)

6. Flatten carefully—then trace the pattern onto paper, correct and add seam allowance.

Use your Copy Cloth Master Pattern for fitting or drafting any style you choose, use it for perfecting commercial patterns, or create your own styles directly on the body with Copy Cloth—then smile and sew!

Get complete instructions, special uses and beginning pattern drafting guide in "Introduction to Copy Cloth" available now at $2.95 wherever Copy Cloth is sold.

Patent Pending

Letter of Request

August 31, 1972

Subject: Request for Advisory Opinion and Approval

Enclosures: (a) Technical, Marketing and Labeling Data.
(b) Copy Cloth Material Samples.[1]
(c) Brochure, Introduction to Copy Cloth.[1]

Gentlemen:

Clients of this firm, W. James and Barbara Neill, are presently engaged in the preliminary steps to form a business enterprise for the purpose of manufacturing and sales of a product "Copy Cloth."

The purpose of this letter is to respectfully request of the Secretary of the Commission an advisory opinion as to a proposed course of action, details of which are set forth in enclosures forwarded under cover of this letter.

Preliminary market research has been done on a limited basis, however, the proposed course of action described herein has not and is not currently being followed by the requesting party and has not or is not the subject of a present or pending investigation or other proceeding, order, or decree initiated or obtained by the Commission or any other governmental agency.

We believe that the enclosed data and materials present sufficient information such that an informed decision thereon may be made by the Commission staff members without extensive investigation, clinical study, testing, or collateral inquiry. If additional

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[1] Available upon request to Division of Legal and Public Records, Federal Trade Commission, Sixth St., and Pennsylvania Ave., Washington, D.C. 20580.

information is required, we shall be pleased to provide it upon receipt of your request.

Thank you for your attention to this matter.

Very truly yours,

John N. MacDonald

Enclosure (a) to Letter
dated August 31, 1972

TECHNICAL, MARKETING AND LABELING DATA
A PROPOSED COURSE OF ACTION

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TECHNICAL, MARKETING AND LABELING DATA

A PROPOSED COURSE OF ACTION

1. INTRODUCTION

1.1 SCOPE

This enclosure provides detail information concerning the characteristics, uses, aspects of marketing as it relates to informing the purchaser and ultimate user of such characteristics and uses, and labeling of a material product called, "COPY CLOTH". This information includes a detailed description of the product, proposed content of product marking and labeling, as well as printed matter to be given each purchaser at the time of original purchase at the retailer.

2. DESCRIPTION OF PRODUCT—COPY CLOTH

2.1 PURPOSE

COPY CLOTH relates to a new and improved method of and material for making patterns for garments, garment components and other three dimensional contoured articles of manufacture. A method of making patterns for garments and other contoured articles in which the pattern maker or garment designer uses as a starting material a petroleum wax impregnated loose weave material, COPY CLOTH.

A piece of such material, of a size approximating the article or garment component to be fabricated, is first heated to a temperature at which it becomes limp, pliable and readily distortable; it is then draped over and manually shaped to conform to the body contours of the person or other object which is to be fitted. Thereafter, and when the petroleum wax has cooled sufficiently to be substantially non-elastomeric, the contoured material piece is removed from the person or other object, is cut or slitted at all locations where necessary to enable flattening on a planar surface to form a master pattern without dimensional distortion from which paper patterns, garment components or manufacturing drawings may be fabricated and/or dimensioned.

2.2 USES

One of the primary objects of COPY CLOTH is to provide an improved method and material suitable for home use by relatively unskilled persons for the making of master patterns from which perfect fitting garments or other complex three dimensional articles may be fabricated without tedious dimensioning or complexity.

Another object of COPY CLOTH is to provide an improved method and material for making master patterns accurately representative of the configuration of all or any part of a particular person or object and from which paper patterns may be made or garment components may be cut without redimensioning and with confidence that the ultimate garment will be perfectly fitted to the particular person without multiple fittings or alterations.

COPY CLOTH may also be used by professional and industrial users to make master patterns.

Your attention is directed to the brochure entitled "Introduction to COPY CLOTH" forwarded herewith as enclosure (c) to the cover letter. It is proposed that such brochure and other literature describing advanced techniques in the use of COPY CLOTH shall be prepared from time to time and supplied to the retailers selling COPY CLOTH material to the public. The price of the material shall not include such supplementary literature. Instructions shall be provided free of charge to each purchaser of COPY CLOTH as set forth more fully in section 5 hereof.

2.3 TECHNICAL CONSIDERATIONS

COPY CLOTH is a material consisting of at least two layers of an all cotton fabric, about 10 by 12 weave, with the interstices and interlayer spaces impregnated with a petroleum wax having a softening temperature in the range from 130 to 150 degrees Fahrenheit. The wax manufacturer represents that the flash point of the wax used in COPY CLOTH is 415 degrees Fahrenheit.

COPY CLOTH is sold to the purchaser as a pre-impregnated double layer material.

The COPY CLOTH material is relatively hard and non-elastomeric at temperatures of 100–110 degrees Fahrenheit.

Extensive experimentation with combinations of other fabrics and impregnating materials did not provide a product characteristic to permit substantial dimentional distortion and manually conformable to contoured articles.

One prior art approach has been to manufacture a sweater-like garment from fabric of metallic thread, e.g. soft copper wire, having sufficient ductility so that the fabric can be shaped to the contour of the body and thereafter have sufficient rigidity to maintain a record of the contours reasonably adequate to create patterns. This approach has the disadvantage of being very expensive to the purchaser and is either insufficiently ductile to be manually conformable to contoured articles or, if made highly ductile, is insufficiently rigid to maintain a reliable representation of such contours during the subsequent conversion of the shaped garment to planar pattern form.

Another general approach, previous attempted by others, has been to place a sweater-like garment on the body of an individual and thereafter spray or coat the garment with hot wax or some thermoplastic or thermosetting resin. This approach has distinct disadvantages which COPY CLOTH does not have, to wit, it is aesthetically objectionable to the person being fitted, it is not suitable for home use, and it may give rise to allergenic reactions.

In home use, a convenient and preferred method of heating the COPY CLOTH pre-impregnated material until limp and pliable is to place a piece of the material of the desired size in hot tap water impounded in a tray or sink of suitable size and regularly replenished to maintain maximum heat for usual household use, i.e. from 130–140 degrees Fahrenheit. Alternatively, COPY CLOTH may be heated between two thin sheets of aluminum foil and then apply heat energy by ironing the material-and-foil sandwich with a conventional household electric iron. COPY CLOTH may also be heated (either with or without foil) by the use of infra-red lamps or other thermal radiation devices. COPY CLOTH should not be used near fire or

flame. It is flammable, but not highly combustible. Its burning rate approximates that of a common household candle.

Two samples of the COPY CLOTH material are enclosed herewith for your evaluation. One piece approximates 8" by 11" and the other 8" by 9".

A patent application for COPY CLOTH methods and material has been filed with the United States Patent Office. A patent is presently pending.

3. MARKETING

3.1 METHOD OF PACKAGING AND DISTRIBUTION

COPY CLOTH is a loose weave material impregnated with wax. The pre-impregnation of the double layer fabric shall not be performed in the home, but rather such pre-impregnated material shall be produced in quantity and marketed to the amateur, professional and industrial users in roll form or in the same manner as other yard goods.

It is presently intended that COPY CLOTH shall be distributed to existing yard goods and sewing center retailers through established commercial representatives in a manner other yard goods are distributed in yardage bolts approximating 36 inches in width and 25 yards per bolt.

Said representatives shall be middle-men. Some shall inventory the COPY CLOTH material and supply retailers in their territory from their existing inventories. Others may merely solicit orders for acceptance by the manufacture from existing retailers of yard goods in specified territories throughout the United States. These comments relate to future plans, no representatives shall be authorized to distribute COPY CLOTH pending your advisory opinion resulting from this request.

4. PRODUCT MARKING AND LABELING

4.1 COPY CLOTH MATERIAL

It is intended that COPY CLOTH shall be sold in a manner similar to yard goods, i.e. from a bolt by the piece.

It is proposed that a paper tape approximately 4 inches in width be sandwiched the full length of the COPY CLOTH material when it is rolled on the bolt. Said tape shall be imprinted with instructions for use and heating methods and in bold or contrasting type face state, "CAUTION: FLAMMABLE. DO NOT USE NEAR FIRE OR FLAME."

No other marking or labeling of the product is presently intended or proposed.

5. INSTRUCTIONS AS TO USES AND HEATING METHODS

5.1 PRINTED MATTER TO BE GIVEN EACH PURCHASER

The distributing representatives and each retailer shall be instructed that at the time of the orginal purchase by the user/public, when the COPY CLOTH material is cut from the bolt that the paper tape, discussed in section 4 hereof, shall also be cut and given to the purchaser. The content of the text on the paper tape shall be repeated on the tape so that purchasers of even small quantities of COPY CLOTH shall be assured

of obtaining the full text. Such text shall include detailed instructions concerning the following topics:

5.1.1 SIZE OF MATERIAL

Use COPY CLOTH in sheet sizes generally corresponding to the elements of the garment intended to be designed or articles whose contour is to be copied.

5.1.2 HEATING

Heating at least one piece of said material to a substantially uniform temperature as recommended in section 2.3 hereof.

5.1.3 MANUAL FORMING

Manually form the piece of COPY CLOTH, while at temperature, contiguously on and conforming to the skin surfaces of the model, i.e. apply while COPY CLOTH retains its limp and pliable condition.

5.1.4 COOLING—RETAINS CONTOURS

As COPY CLOTH cools, it retains a configuration corresponding to the surfaces of the model.

5.1.5 OTHER INSTRUCTORS RELATING TO PATTERN MAKING

Marking, removal from model, cutting and flattening.

5.1.6 FLAMMABILITY

State in bold or contrasting type face, CAUTION: FLAMMABLE. DO NOT USE NEAR FIRE OR FLAME. Note: Please refer to comments in sections 2 and 4 of this enclosure concerning flammability.

5.1.7 SALES AND MARKETING DATA

Sales and marketing data may also be stated on said sheet.

6. FEDERAL STATUTORY AND REGULATORY LAWS

6.1 INTENT OF MANUFACTURER/REQUESTING PARTY

It is the intent of the requesting party to manufacture and market COPY CLOTH fulfilling all Federal statutory and regulatory law requirements. We trust that our proposed plan fulfills that intent.

We request an advisory opinion highlighting any aspect of our plan which may not fulfill such requirements.

We submit that our proposal is not within the scope of the following Acts:

Fair Packaging and Labeling Act,

Textile Fiber Products Identification Act, nor

Fammable Fabrics Act.

Never-the-less, we believe that our proposed plans fulfills the spirit of the Flammable Fabrics Act.