Commission a report setting forth in detail the manner and form in which it has complied and is complying with Paragraphs III and VII of this order.

IX.

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

IN THE MATTER OF

BATON ROUGE ATHLETIC CLUB AND HEALTH SPA, INC., ET AL.

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

Docket C-2487. Complaint, Jan. 28, 1974—Decision, Jan. 28, 1974

Consent order requiring two Baton Rouge, La., health spas to warn clearly that any body wrapping device or treatment offered by them may be dangerous to health, and that prospective users should seek a physician's advice before using any such wrap.

Appearances

For the Commission: *Thomas J. Daquila.*

For the respondents: *William H. Cooper,* Baton Rouge, La.

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 Baton Rouge Athletic Club and Health Spa, Inc. (formerly Baton Rouge Health Club Management, Inc.), and Baton Rouge Health Club Management, Inc., Number Two, corporations, and Guy M. Bellelo and Raymond K. Roy, individually and as officers of the said corporations, hereinafter referred to as respondents, have violated the provisions of the 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 Baton Rouge Athletic Club and Health Spa, Inc. (formerly Baton Rouge Health Club Management, Inc.) is a corporation organized and engaged in business under and by virtue of

the laws of the State of Louisiana with its office and principal place of business located at 4109 Choctaw Road, in the city of Baton Rouge, State of Louisiana and respondent Baton Rouge Health Club Management, Inc., Number Two, is a corporation organized and engaged in the business under and by virtue of the laws of the State of Louisiana with its office and principal place of business located at 4820 Government Street, in the city of Baton Rouge, State of La.

Respondent Guy M. Bellelo is the president of Baton Rouge Athletic Club and Health Spa, Inc. (formerly Baton Rouge Health Club Management, Inc.) He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of the said corporation.

Respondent Raymond K. Roy is the president of Baton Rouge Health Club Management, Inc., Number Two. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of the said corporation.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale and sale to the public of health spa memberships, and related services and products including a certain device and treatment called the "Shapely Wrap," which is designed to reduce body measurements. The respondents' "shapely wrap" device and treatment entails the application of a body wrap material soaked in a solution around an individual's body.

PAR. 3. In the course and conduct of their said business, respondents have diseminated, and caused the dissemination of, certain advertisements concerning their said "shapely wrap" device and treatment, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said "shapely wrap" device and treatment; and have disseminated, and caused the dissemination of advertisements concerning said "shapely wrap" device and treatment by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said "shapely wrap" device and treatment in commerce as "commerce" is defined in the Federal Trade Commission Act; and, at all times mentioned herein have maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act.

PAR. 4. The respondents' "shapely wrap" device and treatment may

cause injury to individuals with diabetes, varicose veins, phlebitis, or other circulatory problems.

PAR. 5. The respondents do not obtain the services of medical doctors to examine their members or customers prior to the application of the "shapely wrap" device and treatment to such members or customers.

PAR. 6. The respondents' said advertisements have not contained any warnings as to the aforementioned possibilities of personal injury. Thus, the advertisements tend to lead to an assumption by the public that the "shapely wrap" device and treatment are safe.

PAR. 7. The respondents have not given any oral or other warnings of the aforementioned possibility of personal injury prior to the application of the "shapely wrap" device and treatment to individuals. Thus, the absence of such warnings tends to lead to an assumption by such individuals that the "shapely wrap" device and treatment are safe.

PAR. 8. The respondents' failure to disclose the material facts of the aforesaid possibilities of personal injury involved in the use of the "shapely wrap" device and treatment constituted and now constitutes false, misleading and deceptive advertisement and has had and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisments are true and complete, and into the purchase of health spa memberships, and related services and products by reason of said erroneous and mistaken belief.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce with corporations, firms, and individuals who sell health spa memberships, and related services and products of the same general kind and nature as those sold by respondents.

PAR. 10. 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, and unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Baton Rouge Athletic Club and Health Spa, Inc. (formerly Baton Rouge Health Club Management, Inc.) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and only place of business located at 4109 Choctaw Road, Baton Rouge, La., and respondent Baton Rouge Health Club Management, Inc., Number Two is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and only place of business located at 4820 Government Street, Baton Rouge, La.

Respondent Guy M. Bellelo is the president of Baton Rouge Athletic Club and Health Spa, Inc. (formerly Baton Rouge Health Club Management, Inc.) He formulates, directs and controls the acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

Respondent Raymond K. Roy is the president of Baton Rouge Health Club Management, Inc., Number Two. He formulates, directs and controls the acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Baton Rouge Athletic Club and Health Spa, Inc. (formerly Baton Rouge Health Club Management, Inc.) and Baton Rouge Health Club Management, Inc., Number Two, corporations, and Guy M. Bellelo and Raymond K. Roy, individually and as officers of said corporations, their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of health spa memberships, related services or products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, offering for sale, or selling, any body wrapping device, procedure, method, treatment or service unless each advertisement and sales presentation clearly and conspicuously includes the following warning:

WARNING—Body wrapping may be dangerous to your health. You should seek the advice of your physician before using any such wrap.
If dizziness, swelling, skin irritation or other symptom occurs, use should be discontinued immediately.

Said "Warning" shall be oral in cases of oral presentations and in writing in cases of written presentations.

In advertisements in newspapers or other periodicals, said "Warning" shall be printed in at least eleven point type.

2. Failing to conspicuously disclose the "Warning" stated above in Subsection 1 to each prospective user of any body wrapping device, procedure, method, treatment or service, reasonably prior to such persons entering into an agreement for the purchase and/or use of such device, procedure, method, treatment or service by:

(a) Delivering to each such person a card 5 inches by 8 inches on which is printed said "Warning" and nothing else with the captioned word "WARNING" printed in 18 point bold face type and the other language of said "Warning" in 11 point type.

(b) Posting in a prominent place at all locations where offers of sale, sales or uses of said body wrapping device, procedure, method, treatment or service take place, a sign on which is printed said "Warning" and nothing else, with the captioned word "WARNING" printed in letters 2 inches high and with the other language in letters one inch high.

3. Failing to obtain from each prospective user of any body wrapping device, procedure, method, treatment or service a signed

and dated statement receipting for the "Warning" card delivered pursuant to Subsection 2(a) above.

4. Failing to maintain for a period of two (2) years said signed and dated receipts and other adequate records from which respondents' compliance with the requirements of this order can be ascertained, and to permit the inspection and copying thereof by Commission representatives.

5. Failing to deliver a copy of this order to cease and desist to all persons now engaged, or who become engaged, in the advertising or sale of respondents' health spa memberships, services or products, and failing to secure from each said person a signed statement acknowledging receipt of said order.

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

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

IN THE MATTER OF

SHERWOOD SWAN AND COMPANY TRADING AS SWAN'S, ETC., ET AL.

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

Docket C-2488. Complaint, Jan. 28, 1974—Decision, Jan. 28, 1974

Consent order requiring an Oakland, Calif., company, doing business as a department store, and as a finance company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Harold G. Sodergren.*
For the respondents: *Robert Wahrhaftig,* Oakland, Calif.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts; the Federal Trade Commission, having reason to believe that Sherwood Swan and Company, a corporation doing business as Swan's, and Sherwood Swan Co., a corporation, and Edward G. Morin, individually and as an officer of said corporations, and Sherley Swan Ketsdever, individually and as an officer of Sherwood Swan Co., hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sherwood Swan and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 933 Washington Street, Oakland, Calif.

Respondent Sherwood Swan Co., a wholly-owned subsidiary of respondent Sherwood Swan and Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 933 Washington Street, Oakland, Calif.

Respondent Edward G. Morin is an officer of the named corporate respondents, and Sherley Swan Ketsdever is an officer of Sherwood Swan Co. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondents.

PAR. 2. Respondent Sherwood Swan and Company doing business as Swan's, is now, and for some time last past has been engaged in the operation of a department store and in the advertising, offering for sale, sale and distribution of various articles of merchandise to the public at retail.

Respondent Sherwood Swan Co. is now, and for some time last past has been, engaged, as a finance company, in offering to customers applying for credit, coupon books in denominations from $15 to $300, the coupons in which are exchangeable for merchandise at the department store of respondent Sherwood Swan and Company. Respondent sells these coupon books on an other than open-end credit basis by means of a

retail installment credit coupon book contract, hereinafter referred to as the coupon book contract. Customers who sign a coupon book contract receive a coupon book and are obligated to pay to respondent, in equal monthly installments, the cash price of the coupon book, plus the finance charges computed in accordance with the provisions of the California Small Loan Law.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute the coupon book contract. Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the coupon book contract, respondents:

1. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

2. Fail to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c) (8) (i) of Regulation Z.

3. Fail to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments," as required by Section 226.8 (b) (3) of Regulation Z.

4. Fail to disclose the number and amount of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of

certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Truth in Lending Act, and the regulations promulgated under the Truth in Lending Act; and

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

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

1. Respondent Sherwood Swan and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 933 Washington Street, Oakland, Calif.

Respondent Sherwood Swan Co., a wholly-owned subsidiary of respondent Sherwood Swan and Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at the above stated address.

Respondent Edward G. Morin is an officer of both said corporations, and Sherley Swan Ketsdever is an officer of Sherwood Swan Co. They formulate, direct and control the acts and practices of the said corporations and their address is the same as that of the said corporations.

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

ORDER

It is ordered, That respondents Sherwood Swan and Company, a

corporation; Sherwood Swan Co., a corporation; their successors and assigns, and their officers, and Edward G. Morin, individually and as an officer of said corporations, and Sherley Swan Ketsdever, individually and as an officer of said Sherwood Swan Co., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (hereinafter, in this and other paragraphs of this order, referred to as "respondents"), in connection with any extension or arrangement of consumer credit or advertisement to aid, promote, or assist directly or indirectly any arrangement or extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

2. Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c) (8) (i) of Regulation Z.

3. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

4. Failing to disclose the number and amount of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

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

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

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

It is further ordered, That the individual respondents named herein

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

It is further ordered, That the respondents herein shall within 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

GIMBEL BROTHERS, INC.

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

Docket 8885. Complaint, May 8, 1972—Decision, Jan. 30, 1974

Consent order requiring a leading department store headquartered in New York City, among other things to cease entering into or enforcing agreements, including lease agreements, enabling it to control the identity, size or location of other retailers in shopping centers.

Appearances

For the Commission: *Barbara B. Wiggs, Anthony Joseph, David Wilson, Kenneth Ross.*

For the respondent: *Solinger & Gordon*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (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 corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

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

(a) The term "regional shopping center" means a planned development of retail outlets serving the general public, in an approximately defined trading area and containing one or more major tenants.

(b) The term "major tenant" means a full-line department store,

providing primary drawing power for a regional shopping center.

(c) The term "satellite tenants" means any commercial occupant of a shopping center not a major tenant.

(d) The term "trading area" means the geographic bounds within which tenants of a regional shopping center derive the predominance of their customers.

PAR. 2. Respondent Gimbel Brothers, Inc. [hereinafter referred to as Gimbels] is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 33rd Street & Broadway, New York, N.Y. Gimbels and its wholly-owned subsidiary, Saks Fifth Avenue [hereinafter referred to as Saks], are engaged in the operation of chain retail stores, including full-line department stores and high-style women's specialty stores.

In fiscal 1970, Gimbels was one of the nation's leading department store concerns with sales in excess of $715 million and 30 stores, approximately 13 of which are located in regional shopping centers throughout the nation. Its wholly-owned subsidiary Saks, has about 29 stores in the United States, some of which are also in regional shopping centers. Sales in suburban stores represent a growing share of the company's total sales volume, accounting for 26.7 percent of total sales in 1960, 44.8 percent in 1969 and 46.7 percent in 1970.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases for resale a great variety of consumer products from a large number of suppliers located throughout the United States. Respondent causes these products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments located in N.Y., N.J., Pa., Wis. and other states. Such products have been and are advertised and offered for sale by respondent in newspapers circulated among and between the several states of the nation.

PAR. 4. The movement of population, and particularly the higher income segment of the population, from the central city to the suburbs, has precipitated the growth of shopping centers in suburban areas. In 1960, there were approximately 4,500 shopping centers in the United States; their number now exceeds 13,000 and is projected to reach 21,000 by 1980. In 1970, retail sales in shopping centers amounted to $118 billion and accounted for 33.2 percent of all United States retail sales. Retail sales in shopping centers are projected to reach $200 billion by 1980.

Regional shopping centers are the most economically significant type of shopping center. They reproduce to a substantial extent the retail

facilities once available only in downtown business districts, and are displacing and replacing the central, downtown business district as primary outlets for retail distribution of goods and services. Full-line department store operators, including respondent herein, have recognized the potential business opportunities presented by the expanding suburban markets and have, in recent years, taken steps to establish themselves in regional shopping centers.

PAR. 5. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, corporate respondent, in the course and conduct of its business of offering for sale and selling household goods, home furnishings, apparels and services, has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparable brands of merchandise carried and sold by respondent.

PAR. 6. In recent years, Gimbels has entered into approximately twenty-four lease agreements for the establishment of full-line department stores and high-style specialty shops with shopping center developers. During the course of negotiating such lease agreements the developers have acceded to respondent's demands for certain types of restrictive covenants or provisions designed to protect it from certain types of competition. As of January 31, 1970, over twenty of respondent's lease agreements contain restrictive provisions. Such lease provisions, authorize Gimbels to control and determine the admission of those seeking to occupy space in the following shopping centers: North Hills Shopping Center, Ross Township, Pa.; Eastland Shopping Center, Versailles Township, Pa.; South Hills Shopping Center, Upper St. Clair, Pa.; Monroeville Shopping Center, Monroeville, Pa.; Southgate Shopping Center, Milwaukee, Wis.; Mayfair Shopping Center, Milwaukee, Wis.; Cross County Shopping Center, Yonkers, N. Y.; Moorestown Center, Moorestown, N. J.; Green Acre Shopping Center, Valley Stream, N. Y., and other shopping centers located in various parts of the United States. The restrictive provisions further control conditions affecting tenants in the aforesaid shopping centers.

PAR. 7. In the course and conduct of its business, Gimbels is and has been engaged in unfair methods of competition and unfair acts or practices in commerce, in that it has caused the inclusion and enforcement of lease provisions which suppress, restrict, restrain, hinder, lessen, prevent and foreclose competition in the retail distribution of goods and services in, among others, the following metropolitan trading areas: Pittsburgh, Pa.; Philadelphia, Pa.; Milwaukee, Wis.; and Long Island, N. Y. Said lease provisions include the following:

(a) The right to disapprove other tenant leases;

(b) The right to limit the floor space available to other tenants;

(c) The power to exercise continuing control over the conduct of the satellite tenants' business operations.

PAR. 8. The aforesaid lease provisions, the rights, powers and privileges thereby conferred on respondent as a major tenant of the aforesaid shopping centers, and its exercise and enforcement thereof, have had and continue to have the tendency to restrain trade and commerce in the retail trading areas served by those shopping centers, and represent a course of dealing by respondent designed to eliminate, discourage and hinder discount sales, discount pricing and the establishment of discount outlets in shopping centers. Included among such restraints are the following effects:

(a) Fixing, controlling and maintaining retail prices;

(b) Allowing the respondent to select its competitors and to exclude actual and potential competitors;

(c) Hindering and discouraging discount advertising, discount pricing, and discount selling;

(d) Restricting, hindering and coercing shopping center developers in their choice of potential tenants in shopping centers.

Said leases and lease provisions, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom are to the injury of consumers and respondent's competitors, and constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Gimbel Brothers, Inc. with violating the Federal Trade Commission Act; and

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

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and after 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 makes the following jurisdictional findings and enters the following order:

1. Respondent Gimbel Brothers, 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 33rd Street and Broadway, N. Y., N. Y.

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

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

A. The term "respondent" refers to Gimbel Brothers, Inc., its operating divisions, its subsidiaries, and their respective officers, agents, representatives, employees, successors or assignees.

B. The term "shopping center" refers to a planned development of retail outlets which has a total floor area designed for retail occupancy of at least 200,000 sq. ft. excluding, however, such a development consisting of one major tenant and less than 50,000 sq. ft. designed for retail occupancy by tenants other than the major tenant.

C. The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, whether as lessee or owner of such space, but not as a developer of a shopping center.

D. The term "retailer" refers to a tenant which sells merchandise or services to the public.

E. The term "major tenant" refers to a tenant providing primary drawing power in a shopping center.

F. The term "respondent's pro rata share of lineal feet" refers to the number of lineal feet in a shopping center determined by dividing 50 percent of the total lineal feet of nonmajor tenant mall store frontage by the number of major tenants in the shopping center.

II

A. *It is ordered,* That respondent, in its capacity as a tenant in a shopping center, cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of any agreement which:

1. grants respondent the right to approve or disapprove the entry into a shopping center of any other retailer;

2. grants respondent the right to approve or disapprove the amount of floor space that any other retailer may lease or purchase in a shopping center;

3. prohibits the admission into a shopping center of any particular retailer or class of retailers, including, for purposes of illustration:

(a) other department stores,
(b) junior department stores,
(c) discount stores, or
(d) catalogue stores;

4. Limits the types of merchandise or brands of merchandise or service which any other retailer in a shopping center may offer for sale;

5. specifies that any other retailer in a shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices;

6. grants respondent the right to approve or disapprove the location in a shopping center of any other retailer;

7. specifies or prohibits any type of advertising by other retailers, other than advertising within a shopping center;

8. prohibits price advertising within a shopping center by retailers or controls advertising within a center by retailers in such a way as to make it difficult for customers to discern advertised prices from the common area of such shopping center; or

9. prevents expansion of a shopping center.

B. *It is further ordered,* That respondent, in its capacity as a tenant in a shopping center, shall not enter into or carry out any conspiracy, combination or arrangement with any other tenant to exclude any tenants from a shopping center or to grant respondent or another tenant any control over the admission of other tenants to the shopping center.

III

A. *It is further ordered,* That when respondent is the first major tenant to agree with a developer or landlord of a shopping center to become a tenant in such center, this order shall not prohibit respondent from terminating its agreement to become a tenant in such center if such developer or landlord does not obtain the agreement of one major tenant acceptable to respondent to operate a store in the center.

B. *It is further ordered,* That this order shall not prohibit respondent from negotiating to include, including, carrying out, or enforcing provisions in any agreement (a) with a developer or a landlord of a shopping center, or (b) if respondent shall be the owner of the building in which its store is located within a shopping center or land in a shopping center on which it intends to erect such a building, then with the owners of other buildings and land in such shopping center, which:

1. permit respondent to establish reasonable categories of retailers from which the developer or the landlord may select tenants to be located in the area immediately proximate to respondent's store; provided that such categories shall not include specification of (a)

price ranges, (b) price lines, (c) trade names, (d) store names, (e) trademarks, brands or lines of merchandise of retailers, or (f) identity of particular retailers, including the listing of particular retailers as examples of a category; and *Further, provided,* That such area shall not exceed 150 lineal feet of mall store frontage with respect to respondent's department stores and 200 lineal feet of mall store frontage with respect to respondent's Saks Fifth Avenue stores, immediately proximate to the mall frontage of respondent's store, on each level, *Provided,* That such area does not exceed respondent's pro rata share of lineal feet;

2. require the developer or the landlord to maintain reasonable standards of appearance, signs, maintenance and housekeeping of and in the shopping center;

3. prohibit occupancy of space in the shopping center by clearly objectionable types of tenants, including, for purposes of illustration, shops selling pornographic materials;

4. approve or grant to respondent the right to approve an initial layout of the shopping center, which layout may (a) designate respondent's store, (b) set forth the location, size and height of all buildings, (c) locate parking areas, roadways, utilities, entrances, exits, walkways, malls, landscaped areas and other common areas, and (d) establish a proposed layout for future expansion of the shopping center; and

5. require that any expansion of the shopping center not provide for in the initial layout:

(a) Shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

(b) Shall not interfere with the efficient operation of respondent's store, including its utilities or its visibility from within the shopping center or from public highways adjacent thereto;

(c) Shall not result in a change of (i) the shopping center's parking ratio; (ii) the location of a number of parking spaces reasonably accessible to respondent's store determined by the application of such parking ratio to the number of square feet of floor area of respondent's store; (iii) the entrances and exits to and from respondent's store and any malls; and (iv) those parking area mall entrances and exits which substantially serve respondent's store;

(d) Shall be accomplished only after any and all covenants,

obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, restoration, parking ratio, and easements) of the shopping center, exclusive of the expansion area (i) shall be made applicable to the expansion area and (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area.

IV

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

It is further ordered, That respondent shall:

(1) within thirty (30) days after service of this order upon respondent, notify each developer of shopping centers in which respondent occupies floor space, of this order by providing each such developer with a copy thereof by registered certified mail, and

(2) within sixty (60) days after the date of issuance of this order, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order.

V

It is further ordered, That respondent shall 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.

IN THE MATTER OF

KOSCOT INTERPLANETARY, INC., ET AL.

Docket 8888. Interlocutory Order, Feb. 4, 1974

Order remanding to administrative law judge for disposition complaint counsel's request for *in camera* treatment of the testimony of certain witnesses, the Commission expressing the opinion that under the circumstances described in Section 3.45(b) of Rules of Practice authorizes the administrative law judge to order a closed hearing. Administrative law judge ordered to provide the Commission with a copy of the order disposing of aforesaid request.

Appearances

For the Commission: *Quentin McColgin* and *David Keehn.*
For the respondents: *Pro se.*

ORDER REMANDING MOTION FOR *In Camera* HEARINGS TO THE ADMINISTRATIVE LAW JUDGE

By motion to the administrative, law judge, complaint counsel request (1) that testimony of certain witnesses be placed *in camera* pursuant to Section 3.45(b) of the Rules of Practice and (2) that the General Counsel be directed to seek modification of the order [of] the Florida District Court which order now forbids testimony by said witnesses in this matter. The administrative law judge concluded hat the Florida District Court would be unlikely to modify its order unless such testimony was taken in a closed hearing. He interpreted Section 3.41(a) of the Rules of Practice as precluding him from ordering such a hearing and therefore, he certified to the Commission complaint counsel's request for *in camera* treatment along with the request that modification of the order be sought.

After due consideration of the nature of complaint counsel's motion and the meaning of Sections 3.41(a) and 3.45(b), the Commission concludes that Section 3.45(b) is a specific exception to the general rule requiring public hearings stated in Section 3.41(a); that under the circumstances described therein, Section 3.45(b) authorizes the administrative law judge to order a closed hearing; and that complaint counsel's second request was properly certified to the Commission, but cannot be disposed of until the administrative law judge rules on the first request; accordingly,

It is further ordered, That complaint counsel's request for *in camera* treatment of the testimony of certain witnesses be, and it hereby is, remanded to the administrative law judge for disposition consistent with the above;

It is further ordered, That the administrative law judge provide the Commission with a copy of the order disposing of the aforesaid request for *in camera* treatment.

IN THE MATTER OF

W. T. GRANT COMPANY

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

Docket 8931. Complaint, May 25, 1973—Decision, Feb. 8, 1974

Consent order requiring a nationwide retail chain headquartered in New York City, among other things to cease using deceptive tactics to sell its coupon book credit plan; selling property insurance in a deceptive manner; and selling credit life and credit accident and health insurance in such a way as to violate the Truth in Lending Act.

Appearances

For the Commission: *William R. Herman* and *David G. Grimes, Jr.*

For the respondent: *Martin Connor, Edward Wolfe* and *Peter J. Dias* of *White & Case*, New York, N.Y., *Charles A. Doyle*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that W. T. Grant Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending 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 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 1515 Broadway, New York, N.Y.

PAR. 2. Respondent owns, operates and controls a chain of approximately one-thousand one-hundred sixty-eight (1168) retail stores, located in approximately forty-three (43) states of the United States. Respondent is now and has for some time in the past been engaged in the advertising, offering for sale, sale and distribution of various articles of merchandise and services to the public at retail and in the regular extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

COUNT I

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

PAR. 3. In the course and conduct of its aforesaid business, respondent formulates, directs and controls the acts and practices of its retail stores. Respondent causes advertising mats, memoranda, policy

directives, consumer credit contracts and other documents and communications to be transmitted by the United States mails and by other interstate mechanisms to and from respondent's principal office and place of business and its retail stores located in other states. Respondent sells and distributes merchandise and credit devices in commerce by causing them to be shipped to and from its warehouses and from the places of business of its various suppliers to its warehouses and retail stores for distribution to and purchase by the general public, located in states other than those from which such shipments originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the oridinary course and conduct of its business, respondent offers to consumers applying for credit coupon books in denominations from $20 to $200, the coupons in which are exchangeable for merchandise or services at any of respondent's retail stores. Respondent sells these coupon books on an other than open end credit basis by means of a retail installment credit coupon book contract, hereinafter referred to as the coupon book contract. Consumers who sign a coupon book contract receive a coupon book and are obligated to pay to respondent, in equal monthly installments, the cash price of the coupon book, plus charges for property, credit life, and credit accident and health insurance, if selected, plus the finance charge computed on the sum of such cash price and insurance charges. The due date of the first payment is thirty days after coupons from the book are first exchanged for merchandise or services.

PAR. 5. In the course and conduct of its business, respondent has engaged in acts and practices, of which the following are typical and illustrative, but not all inclusive, for the purpose of inducing applicants for credit to sign coupon book contracts:

1. In advertisements which it has published or caused to be published, respondent has invited consumers to open credit accounts. Typical and illustrative, but not all inclusive, of such advertisements are the following published in various media:

a. In newspapers of general circulation:

Select one of these gifts when you open a new account for $176 or MORE or add the same amount to your existing credit account

ENJOY BETTER LIVING WITH GRANTS CREDIT

b. In leaflets distributed through the mails:

WIN $200 in merchandise Fill in this combination of application for credit and for free drawing * * *

AND AT THE SAME TIME * * * OPEN YOUR CREDIT ACCOUNT (or add on to your open or inactive Grants Credit Account) * * *

c. In leaflets distributed by respondent's employees to customers at respondent's retail stores:

Dear Customer: We'd love to have you become a part of our growing Grant credit family. Why not apply today.
ENJOY BETTER LIVING WITH GRANTS CREDIT–Bring or mail in the application in this pamphlet. No postage is necessary. Always prompt service. Most applications can be approved in a matter of minutes. Credit can be used to purchase anything in the store.

2. Respondent's employees have asked customers in respondent's retail stores, "Do you have an account with us?" or questions of similar import. These employees have offered to take applications for credit from customers who have given negative replies to such questions.

3. When consumers have come to the credit department in respondent's retail stores and requested a credit account, respondent's employees have presented a coupon book contract to those applicants who qualify for credit and have not made any statements about the type of credit being offered before asking such applicants to sign the document.

4. Respondent's employees have given affirmative replies to consumers who have asked whether the coupon book account is an open end credit plan. Typical and illustrative of those replies, but not all inclusive thereof, are those which are suggested in the following instructions issued by respondent:

a. Suppose the customer answers:
IS THIS A 30 DAY CHARGE ACCOUNT?
How would you reply?
THIS CAN BE USED JUST LIKE A 30 DAY CHARGE ACCOUNT.

b. Suppose the customer answered:
IS THIS LIKE MY SEARS CHARGE PLATE?
How would you reply?
YES, WE HAVE AN ACCOUNT LIKE THAT MRS. JONES, BUT WE'RE OFFERING YOU OUR MOST POPULAR PLAN.

5. Respondent's employees have represented to consumers who qualify for respondent's open end credit plan, and have requested such credit, that respondent requires new customers to open a coupon book account before they can obtain an open end credit account.

PAR. 6. By and through the statements, representations, acts and practices set forth in Paragraph Five above and various others of similar import not set forth herein, respondent and its employees have represented, directly and by implication, that:

1. Consumers who apply for credit from respondent will be offered open end credit accounts.

2. The document presented to qualified applicants for credit for their

signatures is an agreement for the extension of open end credit.

3. The coupon books are devices issued pursuant to an agreement for the extension of open end credit.

4. A consumer is required to have had a coupon book account before he can obtain open end credit from respondent.

PAR. 7. In fact:

1. Consumers who apply for credit from respondent are not offered open end credit accounts but are offered coupon book accounts.

2. The document presented to qualified applicants for credit for their signatures, the coupon book contract, is an agreement for the extension of credit other than open end.

3. Coupon books are not treated in the coupon book contract as devices issued pursuant to an agreement for the extension of open end credit, but are treated as goods and are sold by means of a retail installment contract.

4. Consumers who qualify for open end credit from respondent are not required to have had a coupon book account before they can obtain open end credit from respondent.

Therefore, the acts, practices and representations set forth in Paragraphs Five and Six above are false, misleading and deceptive.

PAR. 8. In a substantial number of instances, respondent has charged consumers for property insurance written in connection with credit sales. Typical and illustrative, but not all inclusive, of the circumstances in which such charges were incurred is the following:

1. Prior to presenting the retail installment contract to the consumer, respondent's employees have included the charge for property insurance in the amount financed.

2. Without authority from the consumer, respondent's employees have placed a check next to the statement in the contract, "I wish Property" and have placed the date in the designated position in the "Insurance Agreement" in the contract.

3. Respondent's employees have presented the contract to the consumer and indicated to the consumer the two places where he is to sign the contract without explaining to the consumer that one of the signatures is being requested in order to execute an "Insurance Agreement."

PAR. 9. Since, in the circumstances stated in the preceding paragraph, a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that their signatures were required in order to obtain consumer credit and without knowing that they were signing an "Insurance Agreement," the acts and practices set forth in Paragraph Eight above are false, misleading and deceptive.

PAR. 10. In the course and conduct of its business, and at all times

mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of merchandise and services of the same general kind and nature as those sold by respondent.

PAR. 11. Respondent's use of the aforesaid unfair and deceptive statements, representations and practices, and its failure to disclose material facts, as alleged above, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous belief that those statements and representations were true and complete, and into the purchase or retention of, and payment for, substantial quantities of coupon books and property insurance written in connection with credit sales.

PAR. 12. The acts and practices of respondent alleged above were and are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

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

PAR. 13. Subsequent to July 1, 1969, in the ordinary course and conduct of its business, and in connection with its credit sales, as "credit sale" is defined in Regulation Z, respondent, through its employees, has caused consumers to execute retail installment contracts.

PAR. 14. In a substantial number of instances, respondent has charged consumers for credit life and credit accident and health insurance written in connection with credit sales. Typical and illustrative, but not all inclusive, of the circumstances in which these insurance charges were incurred is the following:

1. Prior to presenting the retail installment contract to the consumer, respondent's employees have included the cost of credit life and accident and health insurance in the amount financed, as "amount financed" is defined in Regulation Z.

2. Without authority from the consumer, respondent's employees have placed a check next to the statement in the contract, "I wish Credit Life and Accident & Sickness" and have placed the date in the designated position in the "Insurance Agreement" in the contract.

3. Respondent's employees have then presented the contract to the consumer and have indicated to the consumer the two places where he is to sign the contract without explaining to the consumer that one of the

signatures is being requested in order to execute an "Insurance Agreement."

PAR. 15. In the circumstances set forth in the preceding paragraph:

1. a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that their signatures were required in order to obtain consumer credit and without knowing that they were signing an "Insurance Agreement;" and

2. a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that credit insurance was required by respondent.

Those consumers' signatures on the "Insurance Agreement" do not constitute the specific dated and separately signed affirmative written indication of the desire to obtain credit life and credit accident and health insurance coverage which is required by Section 226.4(a) (5) (ii) of Regulation Z if the cost of such insurance is not included in the finance charge. Therefore, respondent has:

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

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

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondent named in the caption hereof has violated the provisions of the Truth in Lending Act and of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by complaint counsel and respondent that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

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

alleged in the 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 procedures described in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent W. T. Grant Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Broadway, New York, N. Y.

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 W. T. Grant Company, a corporation, and respondent's agents, representatives, employees and successors and assigns, directly or through any corporate or other deivce, in connection with the advertising, offering for sale, sale or distribution of merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, that:

   a. The coupon book contract is an agreement for the extension of open end credit;

   b. Coupon books are devices issued pursuant to an agreement for the extension of open end credit; or

   c. A consumer is required to have had a coupon book account before he can obtain open end credit from respondent; provided that nothing herein contained shall prevent any representation to a consumer who then qualifies only for a coupon book account that he may thereafter qualify for open end credit.

2. Filling in any portion of or presenting a coupon book contract to any consumer for his signature unless, in connection with each such contract, respondent:

   a. Prior thereto has presented to the consumer the following statement, printed in a clear and conspicuous manner on one side of a single sheet of paper (the reverse side of which sheet

of paper may contain the coupon book contract) without any other language:

[In 16-point bold-face type]

NOTICE: The Federal Trade Commission requires that we provide this information *before* we can offer you a coupon book contract:

[In 12-point bold-face type]

W. T. Grant Company offers two *different* credit plans to qualified customers—an OPEN END CHARGE ACCOUNT and a COUPON BOOK PLAN. The Coupon Book Plan is NOT an open end or revolving credit plan. Some of the differences are:

1. THE KIND OF CREDIT—A CHARGE ACCOUNT is open end or revolving credit. The COUPON BOOK PLAN is installment credit. Once you use the first coupon, you would pay for the entire book in the same way you would pay for a small installment loan.

2. YOUR PAYMENTS—Under the COUPON BOOK PLAN, after you use your *first* coupon, you pay each month part of the *full* price of the coupon book, which includes *all* finance charges, whether you have exchanged all the coupons for specific merchandise or not. When you have a CHARGE ACCOUNT, you pay *only* for the merchandise you have actually purchased, plus finance charges if you don't pay the entire balance each month.

3. COMPUTING FINANCE CHARGES—Finance charges on a CHARGE ACCOUNT are computed on specific merchandise purchased up to that point in time. But COUPON BOOK PLAN finance charges are computed on the *total price* of the coupon book and *not* just on the coupons already exchanged.

4. HOW TO AVOID FINANCE CHARGES—You can avoid finance charges when you have a CHARGE ACCOUNT by paying the entire balance each month. You can only avoid finance charges on the COUPON BOOK PLAN by paying for the *entire* book within 30 days after you use the first coupon *or* by paying for the coupons used within 30 days after exchanging the first one and returning *all* unused coupons to Grant's. You may return coupons at any time and receive full credit for the unused portion.

[as applicable] YOU MAY CHOOSE EITHER GRANT'S OPEN END CHARGE ACCOUNT OR ITS COUPON BOOK

PLAN [or] AT THIS TIME, YOU ARE ONLY ELIGIBLE FOR THE COUPON BOOK PLAN.

[In 16-point bold-faced type] I received and read the above statement *before* any coupon book contract was filled in or presented to me to sign.

Signed_____ Date _____

b. Prior thereto has obtained an acknowledgment, signed and dated by the consumer, of his having received and read the aforesaid statement; and

c. Provides the consumer with a copy which he may retain of the aforesaid statement, printed in the manner set forth in Sub-paragraph (a) of this paragraph, which copy shall be on the reverse side of the coupon book contract.

3. Adding on the existing coupon book obligation of any consumer who had not previously been eligible for open end credit from respondent unless respondent has:

a. Obtained and scored a credit application from said consumer within the previous twelve months, which requirement can be fulfilled by updating and rescoring a credit application previously submitted to respondent by the consumer, and

b. Complied with the requirements of Paragraph Two hereof.

4. Offering or presenting to any consumer optional or voluntary property insurance written in connection with any credit sale unless respondent has:

a. Read and presented to the consumer the following statement, printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the credit agreement:

Property insurance is entirely optional. You are not required to buy it to get credit.

b. Obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated by the consumer, of his having received and had read to him the aforesaid statement.

5. Checking the box next to the statement "I wish Property" on the retail installment contract, or otherwise making any mark, designation, or indication on any document in connection with any similar statement respecting the selection of voluntary or optional property insurance; *Provided*, That nothing herein contained shall prevent respondent from setting forth the cost of such insurance, as permitted by Section 226.4(a)(6) of Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub.L. 90–321, 15 U.S.C. 1601, *et*

seq.); *Provided further,* That the cost of such insurance shall not be filled in as part of the "amount financed" on the disclosure statement required by Regulation Z in advance of the consumer's free and independent selection of such insurance.

6. Requesting any consumer to sign any document which purports to indicate the consumer's desire for optional or voluntary property insurance without orally disclosing to the consumer that his credit has already been approved, that property insurance is not required in connection with the extension of credit, that he need not buy such insurance, and that his signature is being requested in connection with an election of voluntary or optional property insurance.

7. Misrepresenting, orally or otherwise, directly or by implication, that voluntary or optional property insurance is required as a condition of obtaining credit from respondent.

8. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of voluntary or optional property insurance.

II

It is further ordered, That respondent W. T. Grant Company, a corporation, and respondent's agents, representatives, employees, and successors and assigns, directly or through any corporate or other device, in connection with the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub.L. 90–321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to include and to itemize the amount of premiums for credit life and credit accident and health insurance as part of the finance charge, unless the amount of such premiums is excluded from the finance charge because of appropriate exercise of the option available pursuant to Section 226.4(a)(5) of Regulation Z.

2. Offering or presenting to any consumer optional or voluntary credit life and/or credit accident and health insurance in connection with any credit transaction unless respondent has:

a. Read and presented to the consumer the following statement, printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the credit agreement:

Credit life and/or credit accident and health insurance are entirely optional. You are not required to buy them to get credit.

b. Obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated

by the consumer, of his having received and had read to him the aforesaid statement.

3. Checking the box next to the statement "I wish Credit Life and Accident and Sickness" in the retail installment contract, or otherwise making any mark, designation or indication on any document in connection with any similar statement respecting the selection of voluntary or optional credit life insurance and/or credit accident and health insurance; *Provided*, That nothing herein contained shall prevent respondent from disclosing the cost of such insurance, as permitted by Section 226.4(a)(5)(ii) of Regulation Z; *Provided further*, That the cost of such insurance shall not be filled in as part of the "amount financed" on the disclosure statement required by Regulation Z before the consumer has given affirmative written indication that he desires such insurance coverage.

4. Requesting any consumer to sign any document which purports to indicate the consumer's desire for optional or voluntary credit life and/or credit accident and health insurance without orally disclosing to the consumer that his credit has already been approved, that credit life and/or credit accident and health insurance are not required in connection with the extension of credit, that he need not buy such insurance and that his signature is being requested in connection with an election of optional credit life and/or credit accident and health insurance.

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

6. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of optional or voluntary credit life and/or credit accident or health insurance.

7. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

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

9. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondent shall retain a detailed description of the procedures used by it in the preceding three (3) years to determine whether a consumer has qualified for a coupon book account only or has also qualified for open end credit from respondent.

It is further ordered, That respondent shall, one (1) year after the

date upon which this order becomes final and one (1) year thereafter, file with the Commission a report, in writing, which shall include the following information, with respect to those states in which respondent offers coupon books:

1. The number of coupon book contracts and open end credit agreements signed in the previous year;

2. The number of consumers who have qualified for open end credit from respondent but chose to sign a coupon book contract during the previous year;

3. The number of consumers who qualified during the prior year for a coupon book account only and did not sign a coupon book contract;

4. The number of consumers during the previous year who, having previously been ineligible for open end credit from respondent, became eligible for and chose such credit.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the making of respondent's policy concerning consumer credit, in the preparation or placement of advertisement offering to extend consumer credit, in the consummation of any extension of consumer credit, or in the offering of property, credit life or credit accident and health insurance in connection with any consumer credit transaction, and that respondent secure a signed statement from each such person acknowledging that he has received and read this order.

It is further ordered, That respondent 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 the order.

It is further ordered, That respondent shall retain for two (2) years following its execution the original of any statement or disclosure the receipt of which must be acknowledged by any consumer pursuant to this order.

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

IN THE MATTER OF

PEERLESS MATTRESS & FURNITURE COMPANY, ET AL.

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

Docket C-2489. Complaint, Feb. 11, 1974—Decision, Feb. 11, 1974

Consent order requiring a Flint, Mich., seller of mattresses and other household furniture, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Jeffrey P. Albert.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Peerless Mattress & Furniture Company, a partnership, and Charles E. Pemberton, LaRue I. Pemberton, James A. Pemberton, Lenore R. Winacoff, Sheila F. Bloom, and Ilene M. Isaacs, individually and as partners in said partnership, and Virgil A. Sellers, individually and as an employee of said partnership, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Peerless Mattress & Furniture Company is a partnership organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 816 South Saginaw Street, Flint, Mich.

Respondents Charles E. Pemberton, LaRue I. Pemberton, James A. Pemberton, Lenore R. Winacoff, Sheila F. Bloom, and Ilene M. Isaacs are individuals and are partners in the partnership respondent, and respondent Virgil A. Sellers is an individual and is the general manager of the partnership respondent. They formulate, direct and control the acts and practices of the partnership respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the partnership respondent.

PAR. 2. Respondents are now, and for some time have been, engaged in the offering for sale and the sale of mattresses and other household furniture to the public at retail.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents offer to extend and extend 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, respondents, in the ordinary course of their business as aforesaid and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, their customers to enter into contracts for the purchase of respondents' goods and services, hereinafter referred to as "the contract," which contain certain consumer credit cost disclosures. Respondents make no consumer credit cost disclosures other than on the contract.

By and through the use of the contract, respondents:

1. Fail to furnish customers with a duplicate of the contract or instrument, or a statement by which the required disclosures are made and on which the creditor is identified, as prescribed by Section 226.8(a) of Regulation Z.

2. Fail to make all of the disclosures together on either the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature, or on one side of a separate statement which identifies the transaction, as prescribed by Section 226.8(a) of Regulation Z.

3. Fail to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b) (3) of Regulation Z.

4. Fail to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b) (3) of Regulation Z.

5. Fail to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as prescribed by Section 226.8(b) (5) of Regulation Z.

6. Fail to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the merchandise, as prescribed by Section 226.8(c) (1) of Regulation Z.

7. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as prescribed by Section 226.8(c) (2) of Regulation Z.

8. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c) (3) of Regulation Z.

9. Fail to use the term "amount financed" to describe the amount of credit extended, as prescribed by Section 226.8(c) (7) of Regulation Z.

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

PAR. 5. Subsequent to July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents have caused to be published, advertisements for their goods and services, as "advertisement" is defined in Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of consumer credit. By and through the use of these advertisements, respondents state that there is no charge for credit without also stating, in terminology prescribed under Section 226.8 of Regulation Z, all of the following terms, as required by Section 226.10(d) (2) of Regulation Z:

(i) The cash price, or the amount of the loan, as applicable, as prescribed by Section 226.10(d)(2)(i) of Regulation Z.

(ii) The amount of the downpayment required, or that no downpayment is required, as applicable, as prescribed by Section 226.10(d)(2)(ii) of Regulation Z.

(iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended, as prescribed by Section 226.10(d)(2)(iii) of Regulation Z.

(iv) The deferred payment price, or the sum of the payments, as applicable, as prescribed by Section 226.10(d)(2)(v) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Regulation Z constitutes violation of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Peerless Mattress & Furniture Company is a partnership organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 816 South Saginaw Street, Flint, Mich.

Respondents Charles E. Pemberton, LaRue I. Pemberton, James A. Pemberton, Lenore R. Winacoff, Sheila F. Bloom, and Ilene M. Isaacs are partners in said partnership, and respondent Virgil A. Sellers is the General Manager of said partnership. They formulate, direct and control the policies, acts and practices of said partnership, and their principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That respondents Peerless Mattress & Furniture Company, a partnership, and Charles E. Pemberton, LaRue I. Pemberton, James A. Pemberton, Lenore R. Winacoff, Sheila F. Bloom, and Ilene M. Isaacs, individually and as co-partners trading and doing business as Peerless Mattress & Furniture Company, or under any name or names, and Virgil A. Sellers, individually and as an employee of said partnership, their successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. Section 226) of the Truth in Lending Act (Pub.L. No. 90–321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist fom:

1. Failing to furnish customers with a duplicate of the contract or instrument, or a statement by which the required disclosures are

made and on which the creditor is identified, as prescribed by Section 226.8(a) of Regulation Z.

2. Failing to make all of the disclosures together on either the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature, or on one side of a separate statement which identifies the transaction, as prescribed by Section 226.8(a) of Regulation Z.

3. Failing to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.

4. Failing to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b) (3) of Regulation Z.

5. Failing to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as prescribed by Section 226.8(b)(5) of Regulation Z.

6. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the merchandise, as prescribed by Section 226.8(c)(1) of Regulation Z.

7. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as prescribed by Section 226.8(c)(2) of Regulation Z.

8. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

9. Failing to use the term "amount financed" to describe the amount of credit extended, as prescribed by Section 226.8(c)(7) of Regulation Z.

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

11. Failing to state in advertising the amount of the downpayment required, or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, without stating all of the following in the terminology prescribed under Section 226.8 of Regulation Z, as prescribed by Section 226.10(d) (2) of Regulation Z:

(i) The cash price, or the amount of the loan, as applicable, as prescribed by Section 226.10(d)(2)(i) of Regulation Z.

(ii) The amount of the downpayment required, or that no downpayment is required, as applicable, as prescribed by Section 226.10(d)(2)(ii) of Regulation Z.

(iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended, as prescribed by Section 226.10(d)(2)(iii) of Regulation Z.

(iv) The deferred payment price, or the sum of the payments, as applicable, as prescribed by Section 226.10(d)(2)(v) of Regulation Z.

12. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount prescribed by Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

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

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

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

It is further ordered, That 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

REDI-BREW CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION

OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2490. Complaint, Feb. 12, 1974—Decision, Feb. 12, 1974

Consent order requiring a San Mateo, Calif., franchisor of hot-drink vending machines, among other things to cease misrepresenting the nature, character, performance or efficacy of its vending machines; misrepresenting offers as being restricted or limited to certain individuals with specific qualifications; misrepresenting respondent's affiliation with the Coca-Cola Company; misrepresenting the nature or extent of its services and misrepresenting its business activities. Further, respondent is required to inform prospective customers of their right to a three-day cooling-off period during which they may cancel any contract as set out in the order; and maintain files for a two-year period of all inquiries or complaints on contracts entered into by respondent relating to acts or practices prohibited by this order.

Appearances

For the Commission: *John M. Porter.*

For the respondents: *Robinson & Leland*, San Francisco, Calif.

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 Redi-Brew Corporation, a corporation, and Morgan Montague, individually and as an officer of said corporation, hereinafter sometimes 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 Redi-Brew Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. The respondent corporation maintains its office and principal place of business at 1001 Howard Avenue, San Mateo, Calif.

Respondent Morgan Montague is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is 1001 Howard Avenue, San Mateo, Calif.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of hot drink vending machines and merchandise sold in vending machines to distributors and potential distributors. Said distributors purchase respondents' vending machines under a distribution agreement whereby respondents agree to locate vending machines in areas of high potential customer concentration and perform various other acts helpful to dis-

tributors, and distributors agree to purchase respondents' hot drink products for distribution in their vending machines.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have caused vending machines and merchandise, when sold, to be shipped or delivered from their place of business in the State of California to purchasers thereof located in other States of the United States and have disseminated in newspapers of interstate circulation and by the United States mails, advertisements designed and intended to induce sales of vending machines and merchandise, and thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in said vending machines and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of vending machines and merchandise, respondents have made numerous statements and representations in newspapers and promotional material. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

* * * * * * *

After eighteen months of research and development, the founders of Redi-Brew developed a concept that virtually eliminates the problems that plague businesses serving hot beverages.

* * * * * * *

What qualifications are necessary to become a Redi-Brew distributor?

The selection of a distributor is made by the home office only after the company is certain that the person being considered is honest, trustworthy, dependable, industrious and willing to put forth the effort that is required for him to be successful. We do not want an inept distributor servicing accounts that the company has put out effort and expense to establish.

* * * * * * *

AVAILABLE NOW–Large Corporation desires responsible person to distribute TENCO (a Division of Coca-Cola) COFFEE PRODUCTS. Can start full or part time (5-10 hrs. per wk.). Company establishes business for distributors.

NO SELLING. Go fishing or spend more time with your favorite hobby and let the machine age earn you money. CASH REQUIRED $2498. Secured. LIMITED OPPORTUNITY. Write now for information, include phone number.

* * * * * * *

COCA COLA–California Corporation wants men or women to service fast moving automated equipment products, produced by multi-billion dollar company.

* * * * * * *

Who secures the accounts, the distributor or Redi-Brew? Redi-Brew. Redi-Brew Corp.

proposes to offer distributors a great deal of help, the first step of which is to secure original accounts for the distributor.

PAR. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of vending machines and merchandise, respondents, through their agents and representatives, have made and are now making, numerous oral statements and representations regarding ownership and operation of vending machines sold by respondents. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

–Redi-Brew is the freeze-dried division of Coca Cola Company.

–Numerous prime locations are available in specific areas with high potential volume, primarily manufacturing plants, large office buildings and other areas with high business volume.

–Redi-Brew is in business to sell hot-drink products and not hot drink machines.

–Redi-Brew grants exclusive territories to distributors.

–Redi-Brew representatives train distributors to repair and service their machines.

PAR. 6. By and through the use of the statements and representations set forth in Paragraph Four and others of similar import but not specifically set forth therein, and through said oral statements set forth in Paragraph Five, and others of similar import but not specifically set forth therein made by respondents, their employees, agents and representatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Vending machines sold by respondents are of high quality and durability.

2. The respondents' offer to sell vending machines is limited to persons who possess certain qualifications beyond having the necessary capital.

3. Respondents are a division of the Coca Cola Company.

4. Respondents will obtain profitable sales producing locations for the placement of vending machines purchased from them.

5. Respondents' representatives will train distributors in servicing and repairing mechanical problems and otherwise enable distributors to be self-sufficient in the care and operation of respondents' products.

6. Distributors will be granted exclusive territories in which to operate.

7. The prime business of respondents is the sale of hot-drink products, and not the sale of the vending machines.

PAR. 7. In truth and in fact:

1. Vending machines sold by respondents are of inferior quality and seldom perform as advertised.

2. Respondents take no steps to check the qualifications of potential purchasers.

3. Respondents are not now, nor have they ever been, in any way connected with the Coca Cola Company.

4. In most instances, respondents fail to place vending machines in top sales producing locations, and in many cases, fail to place the machines in any locations.

5. Respondents fail to train distributors in servicing and repairing vending machines and provide little, if any, assistance to distributors who request it.

6. Distributors are not granted exclusive territories in which to operate; on the contrary, respondents attempt to sell as many distributorships as possible with little or no concern for the number of distributors within a given territory.

7. The prime interest of respondents is selling vending machines.

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

PAR. 8. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of vending machines and merchandise sold in vending machines of the same kind and nature of those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of vending machines and merchandise offered by respondents by reason of said erroneous and mistaken belief.

PAR. 10. 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 unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Redi-Brew Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1001 Howard Avenue, San Mateo, Calif.

Respondent Morgan Montague is an officer and director of said corporation. As a director, he helps to formulate, direct and control the policies of the said corporation and as an officer he directs and controls the acts and practices of said corporation. His address is the same as that of the corporation.

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

ORDER

It is ordered, That respondents Redi-Brew Corporation, a corporation, its successors and assigns, and its officers, and Morgan Montague, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines, merchandise sold in vending machines, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, that vending machines or any other products sold by respondents are of excellent quality or durability, or misrepresenting, in any manner, the na-

ture, character, performance or efficacy of respondents' vending machines or any other products.

2. Representing, directly or by implication, that an offer of any product or service is restricted or limited to individuals or firms with specific qualifications unless such represented restrictions or limitations are actually enforced and adhered to in good faith.

3. Representing, directly or by implication, that respondents are connected with the Coca Cola Company or otherwise misrepresenting their affiliation with any other firm, organization, group or individual.

4. Misrepresenting that respondents will secure profitable locations for their distributors.

5. Misrepresenting in any manner the nature and extent of assistance provided by respondents to distributors of respondents' machines and other products.

6. Misrepresenting, directly or by implication, that any distributor will receive an exclusive sales territory.

7. Representing, directly or by implication, that respondents are primarily in the business of selling merchandise sold in vending machines or misrepresenting in any manner the true nature of respondents' business activities.

It is further ordered, That respondents:

a. Inform orally all prospective distributors and customers and provide in writing in all contracts entered into after the effective date of the order, that (1) the contract may be cancelled for any reason by notification to respondents in writing within three days from the date of execution and that (2) the contract is not final and binding until respondents have completely performed their obligations thereunder by placing the vending machines in locations satisfactory to the distributor and said distributor has thereafter signed a statement indicating his satisfaction.

b. Refund immediately all monies received on contracts entered into after the effective date of the order to (1) prospective distributors who have requested contract cancellation in writing within three days from the execution thereof and to (2) prospective distributors who have refused to sign statements indicating satisfaction with respondents' placement of the machines, and (3) prospective distributors showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order in contracts entered into after effective date of this order.

It is further ordered, That respondents maintain files containing all inquiries or complaints on contracts entered into after the effective date

of this order from any source relating to acts or practices prohibited by this order, for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' distributorships or products or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and his affiliation with a new business or employment. Such notice shall include respondent's current business address and 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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

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

IN THE MATTER OF

KOSCOT INTERPLANETARY, INC., ET AL.

Docket 8888. Interlocutory Order, Feb. 22, 1974

Order directing Commission's general counsel to seek appropriate modification of order of the U.S. District Court for the Middle District of Florida restricting testimony of certain witnesses and persons who may have information relevant to Commission's proceeding.

Appearances

For the Commission: *Quentin McColgin* and *David Keehn.*

For the respondents: *Pro se.*

ORDER GRANTING MOTION TO SEEK MODIFICATION OF DISTRICT COURT ORDER

By motion to the administrative law judge, complaint counsel heretofore requested: (1) that testimony of certain witnesses be placed *in camera* pursuant to Section 3.45(b) of the Rules of Practice of the Federal Trade Commission, and (2) that the general counsel of the Federal Trade Commission be directed to seek modification of the order of the Honorable Gerald B. Tjoflat, United States District Judge for the Middle District of Florida, entered on Oct. 17, 1973, in the case styled *United States* v. *Koscot Interplanetary, Inc., et al.*, No. 73–71–Orl–Cr, said order having restricted the testimony of certain witnesses and persons who may have information relevant to the above-captioned Commission proceeding. By order dated Jan. 18, 1974, the administrative law judge certified the aforesaid motion to the Commission.

By order issued on Feb. 4, 1974, the Commission remanded to the administrative law judge complaint counsel's request for *in camera* proceedings in connection with the testimony of the aforesaid witnesses.

The administrative law judge having subsequently issued a proper order pursuant to the remand, and the Commission having determined that it is now necessary to seek a modification of the aforesaid court order,

It is ordered, That the general counsel of the Federal Trade Commission be, and he hereby is, directed to seek an appropriate modification of the aforesaid United States District Court order.

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

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

Docket C–2059. Complaint, Oct. 8, 1971—Modifying Order, Feb. 26, 1974

Order reopening proceeding and modifying cease and desist order, 79 F.T.C. 589, by deleting two (2) sections of the order which require respondent to disclose the approximate numerical odds of winning each prize awarded in its promotional "sweepstakes" contests or the approximate number of recipients to whom the offer is directed where odds are not reasonably capable of calculation.

Appearances

For the respondent: Dinsmore, Shohl, Coates & Deupree, *Cincinnati, Ohio.*

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND DESIST ORDER

The Commission, on January 22, 1974, having issued an order against respondent to show cause why the proceedings herein should not be reopened for the purpose of modifying the consent order to cease and desist entered on October 8, 1971; and

Respondent having answered that it has no objection to the reopening of the proceedings and the modification of the consent order, as set forth in the order to show cause.

Accordingly, *It is ordered,* That the matter be reopened, and that the order herein be modified in the following manner: strike section A(2); renumber sections A(3), A(4), A(5), and A(6) as, respectively, A(2), A(3), A(4), and A(5); strike section B(3); renumber sections B(4) and B(5) as, respectively, B(3) and B(4).

IN THE MATTER OF

REUBEN H. DONNELLEY CORPORATION

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

Docket C-2060. Complaint, Oct. 8, 1971—Modified Order, Mar. 5, 1974.

Order reopening proceedings and modifying cease and desist order, 79 F.T.C. 599, 36 F. R. 22148, by deleting two paragraphs of the order which require respondent to disclose the approximate numerical odds of winning each prize awarded in its promotional contests or the approximate number of recipients to whom the offer is directed if the numerical odds are not reasonably capable of calculation.

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND DESIST ORDER

The Commission, on Jan. 22, 1974, having issued an order against respondent to show cause why the proceedings herein should not be reopened for the purpose of modifying the consent order to cease and desist entered on Oct. 8, 1971; and

Respondent having answered that it has no objection to the reopening of the proceedings and the modification of the consent order, as set forth in the order to show cause.

Accordingly, *It is ordered,* That the matter be reopened, and that the order herein be modified in the following manner: strike Section A(2); renumber Sections A(3), A(4), A(5), and A(6) as, respectively, A(2), A(3), A(4), and A(5); strike Section B(3); renumber Sections B(4) and B(5) as, respectively, B(3) and B(4).

IN THE MATTER OF

READER'S DIGEST ASSOCIATION, INC.

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

Docket C-2075. Modified Order—Mar. 5, 1974

Order reopening proceedings and modifying cease and desist order, 79 FTC 696, 36 FR 22824, by deleting the requirement to disclose the approximate numerical odds of winning each prize awarded in its promotional contests or the approximate number of recipients to whom the offer is directed if the numerical odds are not reasonably capable of calculation.

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND DESIST ORDER

The Commission, on Jan. 22, 1974, having issued an order against respondent to show cause why the proceedings herein should not be reopened for the purpose of modifying the consent order to cease and desist entered on Nov. 2, 1971; and

Respondent having answered that it has no objection to the reopening of the proceedings and the modification of the consent order, as set forth in the order to show cause.

Accordingly, *It is ordered*, That the matter be reopened, and that the order herein be modified so that Subsection 1 A(1) will read:

> A. (1) Failing to disclose clearly and conspicuously the total number of prizes which will be awarded, the nature of the prizes, and the approximate value of each prize.

and, further, to modify the order herein so that Subsection I B(4) will be deleted.

IN THE MATTER OF

THE GREAT ATLANTIC & PACIFIC TEA COMPANY INC.

Docket 8916. Interlocutory Order, March 7, 1974

Order denying motion to intervene and request for oral argument by National Association of Food Chains for purpose of requesting stay of proceedings and re-examination of Trade Regulation Rule Governing Retail Food Store Advertising and Marketing Practices.

Appearances

For the Commission: *Joel P. Bennett, Michael McCarey,* and *Rossalind D. Lazarus.*

For the respondent: *Collier, Shannan, Rill, & Edwards,* Wash., D.C.

ORDER DENYING MOTION TO INTERVENE

The National Association of Food Chains has filed a "Motion to Intervene For Purpose of Requesting Stay of Proceedings and Reexamination of Trade Regulation Rule," received Feb. 6, 1974. To the extent that petitioner seeks through its motion to participate as a party in the instant adjudicative proceeding, its motion must be denied.[1] As members of the public who may be affected by the "Trade Regulation Rule Governing Retail Food Store Advertising and Marketing Practices," petitioners have a perfect right to petition the Commission to reexamine that rule. They have, by separate request, done so, and the Commission has considered their request. However, the possibility that an adjudicative proceeding will result in an interpretation of a law or regulation which may be applicable as a legal precedent to others not accused in the adjudicative proceeding, cannot be grounds for intervention in that proceeding by all who may possibly be affected in this way by it.

Where parties have been allowed to intervene in adjudicative proceedings, it has generally been because some important interest of the petitioner would be affected by the *order* which might be issued in the proceeding. That is clearly not the case here.[2]

The Commission also has determined that oral argument is unnecessary for a determination of the issues in this matter. Therefore,

It is ordered, That petitioner's motion to intervene and its request for oral argument thereupon be, and they hereby are, denied.

IN THE MATTER OF

ST. JOE MINERALS CORPORATION

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

Docket 8892. Complaint, June 29, 1972—Decision, Mar. 11, 1974

Consent order requiring a New York City producer of lead and zinc, among other things to cease acquiring, without prior Commission approval, any corporations engaged in the production or sale in the United States of more than 30,000 tons per year of lead ore or related lead products. This prohibition is in effect until Oct. 25, 1977.

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[1] A motion to intervene should be made initially to the administrative law judge. However, inasmuch as the purpose for which intervention was sought here relates to an issue which had already been certified by the judge to the Commission, it seems to be in the interest of expedition for the Commission to consider the matter initially.

[2] This should not be taken as a judgment either way on the propriety of petitioner's participation as *amicus curiae* at some point in the proceeding, the traditional role accorded to those concerned with the precedential impact of adjudicative decisions.

Appearances

For the Commission: *K. Keith Thurman* and *James C. Egan.*

For the respondent: *Debevoise, Plimpton, Lyons & Gates,* New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that St. Joe Minerals Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the stock, business and assets of Quemetco, Inc., a corporation in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18); and therefore, pursuant to Section 11 of said Act, issues this complaint stating its charges as follows:

I. DEFINITIONS

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

(a) "The U.S. lead market" consists of all primary lead and secondary lead produced in the U.S. and all imports of lead pigs and bars.

(b) "Primary lead" is refined lead and antimonial lead produced by the smelting and refining of ores and base bullion.

(c) "Domestic primary lead" is refined lead and antimonial lead produced in the United States by the smelting and refining of domestic ores and base bullion and foreign ores and base bullion.

(d) "Secondary lead" is lead recovered from scrap sources, such as scrap lead-acid type batteries.

II. ST. JOE MINERALS CORPORATION

2. Respondent, St. Joe Minerals Corporation (hereinafter "St. Joe"), is now, and was at the time of the acquisition alleged in this complaint, a New York corporation with its principal office and place of business located at 250 Park Avenue, New York, N.Y. On May 11, 1970, the name of respondent was changed from St. Joseph Lead Company to St. Joe Minerals Corporation.

3. In 1969, St. Joe had total sales of $178,974,000 and assets of $201,063,191; and was the 455th largest publicly held industrial corporation in the United States in terms of sales. In 1970, St. Joe had total sales of $161,303,068 and total assets of $210,483,936.

4. In 1969, St. Joe was the largest domestic producer of lead and zinc. St. Joe's lead mines are located in Southeastern Missouri and in 1969 accounted for 47.7 percent of domestic mine production of *recoverable* lead, *i.e.*, the tons of metal in concentrates.

5. At all times relevant herein, St. Joe has sold and shipped its products in interstate commerce through out the United States and was

and is engaged in commerce within the meaning of the Clayton Act, as amended.

III. THE ACQUISITION

6. On Dec. 29, 1970, St. Joe acquired Quemetco, Inc. (hereinafter "Quemetco") by the payment of $13.50 for each outstanding share of common stock of Quemetco. The value of this payment was $7.8 million.

IV. QUEMETCO, INC.

7. Quemetco is a California corporation with its principal office located at 720 South Seventh Avenue, City of Industry, Calif. Since the date of acquisition, Quemetco has been operated as a subsidiary of St. Joe. Prior to July 1970, the name of Quemetco, Inc. was Western Lead Products Company.

8. In 1970, Quemetco was a producer of secondary lead and lead and zinc oxides and alloys with operating facilities located in the States of Washington, Indiana, Texas and California and the Republic of Mexico. In that year, Quemetco operated secondary smelters in City of Industry, Calif.; Indianapolis, Ind.; and Seattle, Wash.

9. Quemetco's total sales for the fiscal year ending Mar. 31, 1970 were $25,618,531. For the year ending Dec. 31, 1970, Quemetco's total sales were $30,425,419.

10. At all times relevant herein, Quemetco has sold and shipped its products in interstate commerce throughout the United States and was and is engaged in commerce within the meaning of the Clayton Act, as amended.

V. TRADE AND COMMERCE

A. *The U.S. Lead Market*

11. In 1969, the U.S. lead market consisted of 1,537,190 short tons of lead produced by domestic primary and secondary lead refiners or imported as lead pigs and bars; and its value was $443.1 million. In 1970, said market consisted of 1,515,353 short tons of lead produced by domestic primary and secondary lead refiners or imported as lead pigs and bars; at a value of $473.4 million.

12. Prices in the U.S. lead market are posted in New York City by the leading primary lead producers. Such prices reflect the supply of lead from primary and secondary refiners and imports of lead pigs and bars.

13. The U.S. lead market is highly concentrated, with the top four firms accounting for 60 percent of total shipment in 1969 and 1970 by weight and the top eight firms accounting for over 70 percent of such total shipments.

14. The number of lead refiners in the U.S. declined from 1960 to 1970.

15. The barriers to entry into lead refining have increased significantly between 1960 and 1970.

16. St. Joe is the second largest supplier in the U.S. lead market. In 1969, St. Joe accounted for 15.2 percent of shipments in that market. In 1969, Quemetco was the seventh largest supplier of lead for said market and accounted for 1.6 percent of that market. In 1970, St. Joe and Quemetco accounted for 13.6 percent and 2.2 percent respectively of U.S. lead shipments.

B. *The Primary Lead Market*

17. In order to meet the U.S. lead consumption requirements, it is necessary to produce primary lead, as secondary supplies will not suffice to meet said requirements.

18. The refineries used for the production of primary lead differ substantially from those involved in refining secondary lead. Secondary refineries cannot be used to refine primary lead. Of the five domestic primary lead producers, only two operate any secondary refineries.

19. Many battery manufacturers prefer to use only primary lead in the production of lead oxide.

20. In 1969, total production of domestic primary lead was 654,905 short tons, which had a value of $190.7 million. In 1970, total production of domestic primary lead amounted to 690,572 short tons, with a value of $215.7 million.

21. In 1969, total sales of primary lead in the United States were 933,286 short tons. In 1970, total sales of primary lead in the United States were 935,128 short tons.

22. Concentration is extremely high in domestic primary lead refining. The top four firms accounted for 98 percent of 1969 and 1970 primary lead production by domestic refiners, and five firms accounted for all of 1969 and 1970 primary lead production by domestic refiners.

23. In 1969, St. Joe's U.S. operations smelted and refined 233,160 short tons of primary lead, which amounted to 35.6 percent of the total domestic production of primary lead. In 1970, St. Joe's U.S. operations smelted and refined 206,343 short tons of primary lead, which amounted to 29.3 percent of the total domestic production of primary lead in that year.

24. In 1968, Quemetco purchased 13,410 short tons of primary lead. Such purchases would represent 2.8 percent of domestic primary lead shipments or 1.6 percent of primary lead sales in the United States. In 1969, Quemetco was one of the largest purchasers of primary lead. In that year, its purchases were at least 18,810 short tons which would

represent 2.9 percent of domestic primary lead shipments or 2 percent of primary lead sales in the United States. By 1970, Quemetco's purchases of primary lead amounted to 23,429 short tons, which would represent 3.4 percent of domestic primary lead shipments or 2.5 percent of primary lead sales in the United States. By 1973–74, Quemetco's requirements of primary lead are projected to be even more substantial, representing 89,320 short tons or 13.6 percent of domestic primary lead shipments in 1970 and 9.5 percent of primary lead sales in the United States in 1970 and approximately the same percentage of estimated 1973–74 domestic primary lead shipments and primary lead sales in the United States.

C. *The Battery Lead Oxide Market*

25. The production of lead oxide for use in the manufacture of lead-acid type batteries is difficult, requiring a high degree of technical competence and quality control. Since the characteristics of the lead oxide determine the quality of the battery produced from it, lead-acid type battery manufacturers require rigid standards of quality from their lead oxide suppliers.

26. In 1969, battery lead oxide shipments in the United States were 302,160 short tons. The value of the lead used in making such lead oxides was $90 million. By 1970, battery lead oxide shipments were 304,832 short tons; and the value of the lead used in making such lead oxides was $95.2 million.

27. Quemetco is one of the few domestic suppliers of lead oxides for use in manufacturing batteries which is not owned by a battery manufacturer. NL Industries, Inc.; Hammond Lead Products, Inc.; and Quemetco are almost the only sources from which the small, non-integrated lead-acid type battery manufacturers can procure these essential lead oxides.

28. In 1969, Quemetco supplied 23,686 short tons of lead oxides used in the manufacture of lead-acid type batteries and accounted for 7.8 percent of such supply. In 1970, Quemetco supplied 29,824 short tons of lead oxides used in the manufacture of lead-acid type batteries and accounted for 9.8 percent of such supply.

29. In 1969, St. Joe was the principal supplier to lead-acid type battery manufacturers of lead used to produce lead oxides. In that year, its shipments of such lead were 80,960 short tons, 26.5 percent of the lead used in making lead oxides for use in batteries and 41 percent of the lead used by battery manufacturers in producing their own lead oxides. In 1970, St. Joe's shipments of lead to lead-acid type battery manufacturers for the production of lead oxides were 67,734 short tons and 22.2 percent of the lead used in making such lead oxides.

30. St. Joe was, at the time of the acquisition, one of the few most likely potential entrants into the production and sale of lead oxides for use in manufacturing batteries.

D. *The Antimonial Lead Market*

31. Antimonial lead is an alloy of lead and antimony used in the manufacture of ammunition and lead-acid type storage batteries. Its principal use is in the manufacture of grids for lead-acid type storage batteries. In 1969, 1.9 percent of antimonial lead was produced by domestic primary lead refiners, with the remaining production being recovered by secondary lead refiners. In 1970, 2.2 percent of antimonial lead was produced by domestic primary lead refiners.

32. In 1969, total U.S. production of antimonial lead was 342,475 short tons. In that year, the value of the lead contained in antimonial lead was $102.3 million. In 1970, total U.S. production of antimonial lead was 340,000 short tons. The value of the lead contained in such antimonial lead was $106.7 million.

33. Concentration in the domestic production of antimonial lead is high, with the top three firms in 1969 accounting for over 50 percent of such production. Furthermore, three of the largest refiners of antimonial lead are vertically integrated, using most of their production in their manufacture of lead-acid type storage batteries.

34. Quemetco's share of the antimonial lead market has been increasing. In 1968, total production of such antimonial lead was 308,563 short tons, of which Quemetco supplied 12,511 short tons or 4.1 percent. In 1969, Quemetco supplied 17,249 short tons of antimonial lead and accounted for 5 percent of domestic antimonial lead production. By 1970, Quemetco's shipments of antimonial lead amounted to 23,945 short tons which accounted for 7 percent of domestic antimonial lead production.

35. St. Joe produced 9,445 short tons of antimonial lead in 1968, accounting for 3.1 percent of domestic production. In 1969, St. Joe produced 3,560 short tons of antimonial lead and accounted for 1 percent of domestic production. All of St. Joe's production of antimonial lead in each of these years was sold to one firm which used such antimonial lead in the manufacture of ammunition.

36. Prior to its acquisition of Quemetco, St. Joe was one of the few most likely entrants into the sale of antimonial lead to battery manufacturers.

37. Prior to the acquisition of Quemetco by St. Joe, St. Joe had produced and sold dispersion strengthened lead and calcium lead for use in manufacturing grids for lead-acid type batteries. Sales of said dispersion strengthened lead and calcium lead by St. Joe to lead-acid type battery manufacturers has been at the expense of antimonial lead, and

dispersion strengthened lead and calcium lead may further displace antimonial lead as the primary ingredient in the production of grids for lead-acid type batteries.

VI. EFFECTS OF THE ACQUISITION

38. The effects of the acquisition of Quemetco by St. Joe may be substantially to lessen competition or to tend to create a monopoly in the production and sale of lead, primary lead, domestic primary lead, secondary lead, battery lead oxides and battery antimonial lead throughout the United States in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial actual competition between two of the leading firms in the production of lead has been eliminated.

(b) Actual and potential producers of primary lead, other than St. Joe, have been and may be foreclosed now and in the future, from a significant purchaser of primary lead.

(c) Actual and potential producers of domestic primary lead, other than St. Joe, have been and may be foreclosed now and in the future, from a significant purchaser of primary lead.

(d) The dominant position of St. Joe in the primary lead market and the domestic primary lead market is strengthened.

(e) The already high barriers to entry into domestic primary lead production are raised by depriving potential entrants of a large customer, Quemetco, and increasing the need for vertical integration to secure a market for primary lead.

(f) St. Joe has been eliminated as a likely independent entrant into the highly concentrated sale of lead oxides to lead-acid type battery manufacturers, thereby depriving small lead-acid type battery manufacturers of the benefits of significant potential competition and thus lessening their ability to compete with the major battery manufacturers.

(g) St. Joe has been eliminated as an actual and potential competitor in the highly concentrated sale of antimonial lead, particularly the sale to lead-acid type battery manufacturers.

VII. THE VIOLATION CHARGED

39. The acquisition of the stock of Quemetco, Inc. by respondent, St. Joe Minerals Corporation, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 7 of the

Clayton Act, as amended, and the respondent having been served with a copy of that complaint, 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, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter withdrawn this matter from adjudication upon joint motion of the parties and in accordance with Section 2.34(d) of its 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 prescreibed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent St. Joe Minerals 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 299 Park Avenue, in the city of New York, State of New York.

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

ORDER

I

It is ordered, That for a period commencing with the effective date of this order and continuing until the expiration of 5 years from Oct. 25, 1972, St. Joe Minerals Corporation, its subsidiaries, successors and assigns or any concern controlled by a concern which is in control of St. Joe Minerals Corporation shall cease and desist from acquiring or agreeing to acquire directly or indirectly without the prior approval of the Federal Trade Commission ("Commission") all or any part of the stock or share capital, operating assets in excess of $800,000 in any twelve month period, or any interest in or any interest of any one or more concerns, corporate or non-corporate, engaged in the year preceding the acquisition in the production or sale in the United States of more than 30,000 tons per year (in lead content of the concern's end product) of lead ore, lead concentrates, primary lead, secondary lead, lead oxides or lead alloys or any combination thereof, or from entering into any

arrangements with any such concern by which St. Joe Minerals Corporation obtains the United States market share in whole or in part of such concern in the above-described products, *Provided, however*, That nothing in this paragraph shall prevent the acquisition of, or of any interest in, mines which are not in production, mineral reserves or other mineral properties which are not being mined, or mines or other operating assets whose production is not being sold directly or indirectly in the United States.

It is further provided, That the term interest as used in this paragraph shall not apply to either (1) a debt interest or a security interest acquired incident to a sale or (2) an interest arising out of the conversion of a debt or security interest acquired incident to a sale, if disposed of within 12 months after such conversion.

II

It is further ordered, That on Oct. 25, 1973, and on each anniversary date thereafter until the expiration of the prohibitions in Paragraph I of this order St. Joe Minerals Corporation shall submit a report in writing to the Commission listing, for the year preceding such date, all its acquisitions of, mergers with, and agreements to acquire or merge with any concern engaged in the production or sale in the United States of any of the products listed in Paragraph I; the date of each such acquisition, merger or agreement; the products involved and such additional information as may from time to time be required.

III

It is further ordered, That St. Joe Minerals Corporation shall notify the Commission at least 30 days prior to any proposed changes in its corporate status which may affect compliance obligations arising out of the order such as dissolution, assignment or sale resulting in the emergence of successor corporations and that this order shall be binding on any such successor.

IN THE MATTER OF

ATLANTIC HOSIERY MILLS, INC., ET AL.

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

Docket C-2491. Complaint, March 13, 1974—Decision, March 13, 1974

Consent order requiring a Hialeah, Fla., marketer of ladies' hosiery and related products, among other things to cease misbranding and mislabeling its textile fiber products;

failing to maintain records as provided for by statute; furnishing false guaranties, misrepresenting their business status through misleading corporate name; misrepresenting foreign manufactured products as being domestically produced; and failing to mark products as "seconds" or "irregulars" when such is the case.

Appearances

For the Commission: *Herbert L. Stewart.*

For the respondents: *David L. Tobin, Fuller, Brumer, Moss & Cohen*, Miami, Fla.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Atlantic Hosiery Mills, Inc., a corporation, also doing business as Grabco Mills Sales, and Ruben Kloda, individually and as an officer of Atlantic Hosiery Mills, Inc., hereinafter 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 it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Atlantic Hosiery Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The respondent corporation maintains its main offices and principal place of business at 1655 West 31st Place, Hialeah, Fla.

Respondent Ruben Kloda is an officer of said corporation. He assists in formulating, directing and controlling the practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondents are engaged in the business of purchasing ladies' hosiery, and related products, substantial quantities of which are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection. They cause such hosiery to be examined for defects, repaired where possible, and dyed if needed. The hosiery is then packaged in individual containers or envelopes for sale to other wholesalers, and to retailers who in turn sell it to the purchasing public.

COUNT I

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraph One

hereof are incorporated by reference in Count I as if fully set forth verbatim.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely ladies' hosiery, with labels affixed by Atlantic Hosiery Mills, Inc., which failed to disclose the true generic names of the fibers present.

Also among such misbranded textile fiber products were hosiery offered by Atlantic Hosiery Mills, Inc., which did not have labels affixed thereto disclosing:

1. The percentages of the fibers present by weight.

2. The name, or other identification issued and registered by the Commission, of the manufacturer of the products or one or more persons subject to Section 3 with respect to such products.

3. The true generic names of the fibers present in the order of predominance by weight.

4. If it is an imported textile fiber product, the name of the country where processed or manufactured.

PAR. 4. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act, have caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefore labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 5. Respondents, in substituting a stamp, tag, label, or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act, have not kept such records as would show the information set forth on the stamp, tag, label, or other identification that was removed, and the name or names of the person or persons from whom such textile fiber products were secured in violation of Section 6(b) of said Act.

PAR. 6. Respondents have furnished their customers with false guaranties that certain of the textile fiber products were not misbranded or falsely invoiced by falsely representing in writing on invoices that respondents have filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission in violation of Rule 38(d) of the rules and regulations under said Act and Section 10(b) of such Act.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violations of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

COUNT II

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

PAR. 8. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, to be shipped from their place of business in the State of Florida 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. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 10. In the course and conduct of their business, the aforesaid respondents, variously on their sales invoices and elsewhere, refer to the corporate respondent as "Atlantic Hosiery Mills, Inc." and "Grabco Mills Sales," thus stating or implying that said corporate respondent functions as a mill to manufacture the products which it sells. In truth and in fact, while the corporate respondent may perform a part of the functions normally performed by a mill, such as dyeing, boarding, sizing

and packaging of hosiery, such corporate respondent does not own or control any knitting machines, nor does it function as a mill, or otherwise own, operate or directly and absolutely control a mill. Thus, the aforesaid representations are false, misleading, and deceptive.

PAR. 11. There is a preference on the part of many members of the public to buy products directly from mills or factories in the belief that by doing so certain advantages accrue to them, including lower prices.

PAR. 12. In the course and conduct of their business, the aforesaid respondents, variously on their labels and elsewhere, have referred to their products as "Made in America—The American Way," thus stating or implying that the products contained therein are, in fact, manufactured within the United States. In truth and in fact, substantial quantities of hosiery described in that manner are imported into the United States. Thus, the aforesaid representations are false, misleading, and deceptive.

PAR. 13. There is a preference on the part of many members of the public to buy products which are made in the United States in the belief that by doing so certain advantages accrue to them.

PAR. 14. Respondents did not, in each applicable instance, mark their said ladies' hosiery in a clear, conspicuous manner to disclose that they were "irregulars," or "seconds," so as to inform purchasers thereof of its imperfect quality. The purchasing public, in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated Aug. 30, 1960 (amended June 10, 1964).

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that such statments and representations were, and are, true, and into the purchase of substan-

tial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Ten through Fifteen, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Atlantic Hosiery Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. Its offices and principal place of business are located at 1655 West 31st Place, Hialeah, Fla.

Respondent Ruben Kloda is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including those hereinafter referred to. The address of Ruben Kloda is the same as the corporate respondent.

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

ORDER

COUNT I

It is ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, 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 fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce, prior to the time such textile fiber product is sold and delivered to the utlimate consumer without substituting therefor labels conforming to Section 4 of said Act and the rules and regulations promulgated thereunder and in the manner prescribed by Section 4(b) of the Act.

C. Failing to maintain and preserve, as required by Section 6(b) of the Textile Fiber Products Identification Act, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced or advertised under the provisions of the Textile Fiber Products Identification Act.

COUNT II

It is further ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of hosiery or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly using the word "Mills" or any other word or term of similar import or meaning in or as a part of respondents' corporate or trade name or representing in any other manner that respondents perform functions of a mill or otherwise manufacture or process the products sold by them unless or until respondents own, operate, or directly or absolutely control the mill, factory or manufacturing plant wherein said products are manufactured.

2. Misrepresenting in any manner that respondents own, operate or control mills, factories or manufacturing plants where their products are manufactured.

3. Misrepresenting, in any manner, by disclosing on labels, packages, advertisements, or elsewhere, that such products are "Made in America," or through use of terms of like import, unless

such products, in truth and in fact, are made in the United States.

It is further ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale or distribution of hosiery or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 C.F.R. Section 152.4(c)), in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking thereon the words "irregular" or "second," as the case may be, in such degree of permanancy as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by purchasing public.

B. Using any advertisment or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be.

C. Using the words "finest quality" or words of similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business 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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

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

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

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

Docket C-2492. Complaint, Mar. 18, 1974—Decision, Mar. 18, 1974

Consent order requiring a Los Angeles, Calif., explorer and developer of oil, natural gases and coal, refiner and marketer of petroleum products, and manufacturer and distributor of industrial, agricultural and metal finishing chemicals, and a wholly-owned subsidiary (Hooker Chemical Corp., Stamford, Conn.), among other things to cease entering into reciprocal dealings allowing respondents to systematically use actual or potential purchases to obtain or increase sales to certain companies.

Appearances

For the Commission: *Harold G. Munter* and *Louis Jordan.*

For the respondents: *Robert L. Wald* of *Wald, Harkrader & Ross*, Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (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 Occidental Petroleum Corporation and its wholly-owned subsidiary, Hooker Chemical Corporation, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

PARAGRAPH 1. Respondent Occidental Petroleum Corporation (hereinafter "Occidental") is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Cali-

fornia, with its principal place of business located at 10889 Wilshire Boulevard, Los Angeles, Calif.

PAR. 2. Occidental is engaged in the exploration for and development of oil, natural gases and coal, the refining and marketing of petroleum products, and the manufacture and distribution of industrial, agricultural and metal finishing chemicals. As of Dec. 31, 1971, Occidental had net sales of $2.4 billion and total assets of $2.58 billion; it ranked 36th on Fortune's 500 Largest Industrial Corporations for 1971.

Occidental operates through more than 50 domestic and more than 300 foreign subsidiaries. On July 24, 1968, it acquired, as a wholly-owned subsidiary, respondent Hooker Chemical Corporation (hereinafter "Hooker"). In 1967, the year prior to the merger, Occidental and Hooker ranked 102nd and 244th, respectively, on Fortune's 500 Largest Industrial Corporations.

Occidental purchases substantial quantities of various products, services or raw materials from numerous other companies. Occidental makes substantial purchases of products, services or raw materials from companies which are purchasers of the type of products, services, or raw materials sold by Occidental.

PAR. 3. Respondent Hooker Chemical Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its headquarters located at 1515 Summer Street, Stamford, Conn., and is and has been since July 24, 1968, a wholly-owned subsidiary of Occidental.

PAR. 4. Hooker is engaged in the manufacture and distribution of a wide range of industrial, agricultural and metal finishing chemicals as well as plastics and rubber products. It is a substantial supplier of such chemicals as chlorine, caustic soda and sodium chlorate to the pulp and paper industry, among others, and it supplies equipment and processes to that industry. It is a substantial manufacturer and distributor of such plastics as phenolic resins, molding compounds, polyester resins, and polyurethane foam systems, and it also produces and distributes rubber lattices, vinyl chloride polymer, plasticizers, and plastic film and sheeting products.

Other important products produced and distributed by Hooker include animal feeds, fertilizers, pesticides and related products as well as metal finishing chemicals and equipment.

In 1967, prior to its acquisition by Occidental, Hooker had total sales of $364.5 million and total assets of $366 million.

Hooker purchases substantial quantities of various products, services or raw materials from numerous other companies. Hooker makes substantial purchases of products, services or raw materials from com-

panies which are purchasers of the type of products, services or raw materials which are sold by Hooker.

PAR. 5. In the course and conduct of their businesses, Occidental and Hooker have been and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have shipped and sold their products or caused them to be transported from their various places of manufacture and business for sale to other companies with places of business located in the several States of the United States.

PAR. 6. Except to the extent that competition has been frustrated, hindered, lessened and eliminated as hereinafter set forth, Occidental and Hooker have been and are now in competition with firms, partnerships and corporations engaged in the manufacture and sale of the products described above.

PAR. 7. In the course and conduct of its business, as described above, Hooker has, for a number of years and continuing to the present time, engaged in unfair methods of competition and unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act in that it has systematically utilized its actual or potential purchases or the actual or potential purchases of Occidental to obtain, or attempt to obtain, sales of its products, services or raw materials to certain other companies.

In order to utilize the actual or potential purchases as described above, Hooker has engaged in one or more of the following acts or practices, but not limited thereto:

A. Compiled, coordinated and maintained statistical sales and purchase data and other information which related Hooker's sales to one or more companies to Hooker's purchases from one or more companies.

B. Disclosed statistical sales data to purchase personnel.

C. Disclosed statistical purchase data to sales personnel.

D. Utilized statistical sales data and other information in order to determine which suppliers should be favored or the extent to which suppliers should be permitted to participate in supplying Hooker.

E. Utilized statistical purchase data and other information in order to determine the companies to whom Hooker could make sales on the basis of Hooker's purchases.

F. Communicated with certain other companies for the purpose of ascertaining, developing, or furthering a relationship between Hooker's sales to and its purchases from such companies.

G. Sold, or attempted to sell, to certain other companies on the basis of, among other things, Hooker's purchases from such companies.

H. Purchased, or agreed to purchase, from certain companies on the

understanding or condition that such companies would purchase from Hooker.

I. Purchased from certain companies or their designees in order to induce such companies to purchase from Hooker.

J. Decreased or discontinued purchases from certain other companies because such companies would not purchase or increase their purchases from Hooker.

K. Exchanged sales and purchase data with Occidental or its subsidiaries.

L. Utilized the actual or potential purchases of Occidental or its subsidiaries in order to obtain, or attempt to obtain, sales.

PAR. 8. Subsequent to its acquisition of Hooker, Occidental and its subsidiaries had or should have had knowledge of one or more of the acts and practices alleged in Paragraph Seven above, and failed to terminate such acts and practices.

PAR. 9. The acts and practices of Occidental, and Hooker, as alleged above, have had and still have the capacity, tendency and effect of (a) foreclosing actual or potential suppliers of Occidental or Hooker, (b) foreclosing competitors of Occidental or Hooker from selling to actual or potential suppliers of Occidental or Hooker, and (c) giving Occidental and Hooker an unfair competitive advantage over competitors.

PAR. 10. The aforesaid acts and practices of Occidental and Hooker constitute a restraint of trade and an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Occidental Petroleum Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 10889 Wilshire Boulevard, Los Angeles, Calif.

Respondent Hooker Chemical 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 1515 Summer Street, Stamford, Conn.

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

ORDER

For the purposes of this order, the definitions below shall apply, although words of inclusion used herein are not words of limitation:

"Respondent Occidental" includes Occidental Petroleum Corporation, a corporation, its subsidiaries (including respondent Hooker Chemical Corporation), successors, and assigns.

"Respondent Hooker" includes the Hooker Chemical Corporation (a subsidiary of respondent Occidental), its subsidiaries, successors and assigns.

"Company" includes any business entity and its subsidiaries.

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

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

"Personnel" includes officers, directors, employees, agents and representatives.

"Sales personnel" includes any personnel who are routinely and directly engaged in promoting or obtaining sales on behalf of respondent Occidental.

"Purchasing personnel" includes any personnel who are routinely and directly engaged in purchasing on behalf of respondent Occidental.

"Purchasing decision" includes any decision as to the selection of any supplier, the allocation of purchases among suppliers, the purchase of any products, services or raw materials, the placing of any company on a bidders list, the designation of any company as a qualified bidder, the selection of a winning bidder, or the continuance, discontinuance, increase, or decrease of purchases from any supplier.

I.

It is ordered, That respondent Occidental, its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, shall forthwith cease and desist from:

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

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

c. Communicating to another company that:

1. Respondent Occidental's purchasing decisions will or may be conditioned upon or related to sales by respondent Occidental or any other company;

2. Sales by respondent Occidental will or may be conditioned upon purchases by respondent Occidental or any other company.

d. Causing or permitting any of respondent Occidental's executive or managerial personnel to specify or recommend to any purchasing personnel that the status of any company as an actual or potential customer should be considered in making any purchasing decision involving such company;

e. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales of the nature prohibited by this order;

f. Preparing or maintaining statistical data which compares or otherwise relates respondent Occidental's actual or potential purchases from a company to its actual or potential sales to such company; *Provided, however,* That nothing in this subparagraph shall prevent respondent Occidental's personnel other than its sales

or purchasing personnel from preparing or maintaining statistical data which shows the amount of respondent Occidental's actual or potential sales to any company and statistical data which shows the amount of its actual or potential purchases from such company;

g. Causing or permitting any sales personnel to:

1. Engage in purchasing;

2. Obtain statistical data or other information which shows the amount of actual or potential purchases from any company;

3. Specify or recommend to any other of respondent Occidental's personnel that the status of any company as an actual or potential customer should be considered in making any purchasing decision involving such company;

h. Causing or permitting any purchasing personnel to:

1. Engage in selling;

2. Obtain statistical data or information which shows the amount of actual or potential sales to any company;

3. Specify or recommend to any other of respondent Occidental's personnel that sales could or should be made to any company because of the status of such company as an actual or potential supplier.

Provided, however, That nothing in this paragraph shall prohibit any of respondent Occidental's personnel engaging in purchasing for resale or having principal responsibility within the corporation for any product or geographic area (including the principal assistants to such personnel), from engaging in activities described in Parts 1 and 2 of Subparagraphs g. and h. of this paragraph, insofar as such activities are appropriate to the legitimate performance of their duties, and so long as such activities are not used to develop, facilitate, or further any relationship between purchases and sales of the nature prohibited by this order.

II.

It is further ordered, That respondent Occidental shall, within thirty (30) days subsequent to the date of service of this order withdraw and provide for continued isolation:

a. From the possession, custody, and control of all sales personnel, all statistical data and other information which shows actual or potential purchases from another company;

b. From the possession, custody, and control of all purchasing personnel, all statistical data and other information which shows actual or potential sales to another company.

Provided, however, That nothing in this paragraph shall prohibit

any of respondent Occidental's personnel from retaining such statistical data or other information as is needed to engage in activities not prohibited by Paragraph I, above.

III.

It is further ordered, That respondent Occidental shall with sixty (60) days subsequent to the date of this order:

a. Issue a copy of Attachment A, hereof, to each of its personnel who has, at any time since Jan. 1, 1971, served as sales personnel or purchasing personnel, or who has compiled or distributed statistical sales or purchase data, or who has directed or supervised such compilation or distribution;

b. Insert and maintain within all manuals and other such documents which set out its policies or procedures for purchasing or for obtaining sales, or its policies relating to the compilation or distribution of statistical purchase of sales data:

1. The language of Attachment A, hereof.

2. A current list of all sales personnel and purchasing personnel within the operating unit for which such manual is issued.

IV.

It is further ordered, That respondent Occidental shall, in the following manner, mail a copy of Attachment B hereof, together with a copy of this order, to its customers and suppliers described below:

a. Within sixty (60) days subsequent to the date of service of this order, to each company which respondent Hooker has made purchases from or sales to valued in excess of $50,000 in 1972;

b. Within one hundred twenty (120) days subsequent to the date of service of this order, to each company (other than those described in a. above) which respondent Occidental has made purchases from or sales to valued in excess of $50,000 in 1972;

c. Within one hundred twenty (120) days subsequent to the date of service of this order, or by May 1, 1974, whichever comes later, to each company (other than those described in a. and b. above) Occidental has made purchases from or sales to valued in excess of $50,000 in 1973.

V.

It is further ordered, That respondent Hooker shall, within sixty (60) days of the third (3rd) anniversary of the date of this order:

a. Cause each of its then-current personnel who, at any time subsequent to the date of this order, has held any of the positions

listed in Appendix 1, hereof, to complete and furnish to respondent Hooker's legal department a sworn statement in the form of Attachment C, hereof;

b. Cause each of its then-current personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 2, hereof, to complete and furnish to respondent Hooker's legal department a sworn statement in the form of Attachment D, hereof;

c. Cause each of its then-current personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 3, hereof, to complete and furnish to respondent Hooker's legal department a sworn statement in the form of Attachment E, hereof.

VI.

It is further ordered, That respondent Hooker shall:

A. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 1, hereof, and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent Hooker's legal department, within (10) days preceding such termination of employment, a sworn statement in the form of Attachment C, hereof;

B. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 2, hereof, and who leaves the employ of respondent Hooker prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent Hooker's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment D, hereof;

C. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 3, hereof, and who leaves the employ of respondent Hooker prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent Hooker's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment E, hereof.

VII.

It is further ordered, That respondent Hooker shall submit to the Federal Trade Commission:

A. Within ninety (90) days subsequent to the third (3rd) anniver-

sary of the date of service of this order, all sworn statements which it has received pursuant to Paragraph V, above;

B. Within ninety (90) days subsequent to the first (1st) anniversary of the date of service of this order, and annually thereafter for a period of two (2) years, all sworn statements which it has received pursuant to Paragraph VI above, together with the name and address of each individual who failed to complete a sworn statement as requested by respondent Hooker pursuant to Paragraph VI, above, at any time in the one (1) year period immediately prior to any such submission.

VIII.

It is further ordered, That respondent Occidental shall, within sixty (60) days subsequent to the date of service of this order, file with the Federal Trade Commission a written report setting forth in detail the manner and form in which it and respondent Hooker have complied with this order, including, but not limited to the following:

a. The name and title of each individual to whom a copy of Attachment A, hereto was issued pursuant to Paragraph III, above;

b. The name of each company to which a copy of this order was mailed pursuant to Paragraph IV, above.

IX.

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

X.

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

XI.

It is further ordered, That nothing contained in this order shall prohibit respondent Occidental from:

A. Receiving or conveying products, services, or raw materials under any agreement or other mutual undertaking for the exchange (by purchase, sale or otherwise) of products, services, or raw materials of like or substantially like kinds, with or without processing;

B. Entering into or adhering to any contract, agreement, or arrangement (whether tolling, purchase and sale, or otherwise) for the conversion of respondent Occidental's products or goods into other forms for its own use or for resale or for the conversion by respondent Occidental of the products or goods of other companies;

C. Entering into or adhering to any contract or agreement for construction work or for the manufacture, installation, servicing or operating of equipment, products or facilities, or the furnishing of supplies, for respondent Occidental's own use, or the use of its employees, on the condition that respondent Occidental's or other specified products, goods or services be used in the performance of such contracts or agreements;

D. Conveying any product or raw material in which a shortage exists in respondent Occidental's marketing area for such product or raw material, under any term of any agreement or other mutual undertaking by which respondent Occidental is to receive in exchange (by purchase or otherwise) any other product or raw material as to which a shortage also exists in the area in which respondent Occidental has a need therefore; *Provided*, That respondent Occidental may not enter into any such agreement or mutual undertaking unless it has first made diligent efforts to obtain such other product or raw material on the open market and has failed to do so because there exists a shortage in the interstate commerce; and *Provided further*, That at any time the Commission may, after giving to respondent Occidental notice and an opportunity to be heard, vacate, amend, or modify this provision as circumstances then require.

Provided, however, That nothing in this paragraph or any of its subparagraphs shall be construed as having application to, or limiting in any manner whatsoever, any other proceeding or investigation initiated by the Federal Trade Commission, and that the Federal Trade Commission reserves the right to take further action, including the issuance of a complaint, with respect to transactions of the nature described in this paragraph and each of its subparagraphs in the event that it shall at any time in the future have reason to believe that any of such transactions may violate any of the statutes administered by it.

XII.

It is further ordered, That respondent Occidental shall, for a period of five (5) years subsequent to the date of service of this order, maintain and retain:

A. All written contracts and agreements of the nature described in Paragraphs XI–A and D, above; and

B. Documents sufficient to disclose the terms and substance of all oral contracts and agreements of the nature described in Paragraphs XI–A and D above;

together with documents sufficient to show the total annual dollar value and/or volume of deliveries and receipts pursuant to each such written or oral contracts and agreements.

XIII.

Nothing contained herein shall apply:

a. To acts or transactions not in interestate commerce which do not substantially lessen competition within the United States or otherwise restrain trade therein; or

b. To agreements, understandings, contracts or other commercial arrangements with foreign governments or with agencies or entities thereof, whereby respondent Occidental is to receive products, services, or raw materials not produced in the United States.

ATTACHMENT A

Re: Federal Trade Commission Order Concerning the Selling and Purchasing Activities of Occidental Petroleum Corporation and its Subsidiaries.

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

General

No personnel of the Company shall:

1. discuss, compare, or exchange statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between our purchases and our sales.

2. prepare, maintain, or in any manner obtain statistical data which compares or otherwise relates our actual or potential purchases from another company to our actual or potential sales to that company.

Purchasing

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

No purchasing personnel shall:

1. engage in selling;

2. in any manner obtain statistical data or other information which shows the amount of our actual or potential sales to any company;

3. specify or recommend to any of our non-purchasing personnel that sales could or should be made to any company because of the status of that company as an actual or potential supplier.

Selling

No personnel of the Company engaged in obtaining sales to any actual or potential customer shall suggest or imply that such sales are conditioned upon or related to our purchases or purchases by any other company.

No sales personnel shall:

1. engage in purchasing;

2. in any manner obtain statistical data or other information which shows the amount of our actual or potential purchases from any company;

3. specify or recommend to any of our non-sales personnel that the status of any company as an actual or potential customer should be considered in making any decision to purchase from that company.

Exceptions

None of our personnel engaging in purchasing for resale or having principal responsibility within the corporation for any product or geographic area (including the principal assistants to such personnel) are prevented from engaging in activities referred to in parts 1 and 2 of the paragraphs above designated "Purchasing" and "Selling" insofar as such activities are appropriate to the legitimate performance of their duties, and so long as such activities are not used to develop, facilitate, or further any relationship between purchases and sales of the nature prohibited by the Federal Trade Commission's Order.

Violation of Policies or Guidelines

Violation of the above policies or guidelines shall subject any offending employee to disciplinary action, which may include dismissal from his employment.

ATTACHMENT B

To Our Customers and Suppliers:

Pursuant to the attached Order of the Federal Trade Commission, we herewith advise you that it is the policy of Occidental Petroleum Corporation and its subsidiaries to purchase solely on the basis of price, quality, and service. We wish to assure you that our purchases will in no way be conditioned upon or related to our sales to you or any other company.

Chief Executive Officer

ATTACHMENT C

Name and address:

Positions held, with dates, with Hooker Chemical Corporation or its subsidiaries since (the date of this Order ___:

I have marked the statement below which is true:

____1. I have engaged in one or more of the activities of the nature prohibited by Paragraph I, subparagraphs a through f, inclusive, of ___(this Order)___ at some time since ___(the date of this Order)___

____2. I have not engaged in any activities of the nature prohibited by Paragraph I, subparagraphs a through f, inclusive, of ___(this Order)___ since ___(the date of this order)___.

_____

(Signature)

City of

State of

Sworn to and subscribed before me this ____ day of _____, 1973.

_____
(Notary Public)

ATTACHMENT D

Name and address:
Positions held, with dates, with Hooker Chemical Corporation or its subsidiaries since (the date of this Order):

I have marked all statements below which have been true at all times since (the date of this Order):

____1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between purchases and sales by Hooker Chemical Corporation or its subsidiaries.

____2. I have not prepared or maintained statistical data which compared or otherwise related purchases by Hooker Chemical Corporation or its subsidiaries from any company to sales by Hooker Chemical Corporation or its subsidiaries to such company.

____3. I have not, while engaged as sales personnel, specified or recommended to any of our non-sales personnel that the status of any company as an actual or potential customer should be considered in making any decision to purchase from that company.

____4. I have not suggested or implied to another company that purchases by Hooker Chemical Corporation or its subsidiaries might be conditioned upon or related to sales to such company.

____5. I have not, while engaged as sales personnel, engaged in purchasing on behalf of Hooker Chemical Corporation or its subsidiaries.*

____6. While engaged as sales personnel, I have not obtained statistical data or other information which showed the amount of actual or potential purchases from any company by Hooker Chemical Corporation or its subsidiaries.*

____7. While engaged as sales personnel, I have not received any recommendation that sales could or should be made to any company because of the status of that company as an actual or potential supplier.

____8. To the best of my knowledge and belief, none of the individuals who have reported to me since (the date of this Order) have since such time engaged in any of the activities set out above while engaged as sales personnel.

_____
(Signature)

City of _____

State of _____

Sworn to and subscribed before me this ____ day of _____, 1973.

_____
(Notary Public)

*Exception: I may have engaged in such activities while engaging in purchasing for resale or while having principal responsibility within Hooker for any product or geographic area (or while serving as a principal assitant to any individual having such responsibility).

ATTACHMENT E

Name and address:

Positions held, with dates, with Hooker Chemical Corporation or its subsidiaries since (the date of this Order) :

I have marked all statements below which have been true at all times since (the date of this Order) :

____1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between purchases and sales by Hooker Chemical Corporation or its subsidiaries.

____2. I have not prepared or maintained statistical data which compared or otherwise related sales by Hooker Chemical Corporation or its subsidiaries to any company with purchases by Hooker Chemical Corporation or its subsidiaries from such company.

____3. I have not, while engaged as purchasing personnel, specified or recommended that sales could or should be made to any company because of its status as an actual or potential supplier.

____4. I have not suggested or implied to another company that purchases by Hooker Chemical Corporation or its subsidiaries might be conditioned upon or related to sales to such company.

____5. I have not, while engaged as purchasing personnel, engaged in selling on behalf of Hooker Chemcial Corporation or its subsidiaries.*

____6. While engaged as purchasing personnel, I have not obtained statistical data or other information which showed the amount of actual or potential sales to any company by Hooker Chemical Corporation or its subsidiaries.*

____7. While engaged as purchasing personnel, I have received no direction or recommendation to consider the status of any company as an actual or potential customer in making any decision to purchase from that company.

____8. To the best of my knowledge and belief, none of the individuals over whom I have had line authority since (the date of this Order) have since such time engaged in any of the activities set out above while engaged as purchasing personnel.

_____

(Signature)

City of _____

State of _____

Sworn to and subscribed before me this ____ day of _____, 1973.

_____

(Notary Public)

APPENDIX 1

Chairman of the Board, Hooker Chemical Corporation (Hooker)
President, Hooker
Executive Vice President, Hooker

*Exception: I may have engaged in such activities while engaging in purchasing for resale or while having principa responsibility within Hooker for any product or geographic area (or while serving as a principal assistant to an individual having such responsibility).

Group Vice President—Purchasing and Sales, Hooker
Chairman of the Board, Oxy Metal Finishing Corporation (Oxy Metal)
President, Oxy Metal

APPENDIX 2

Vice President—Purchasing, Hooker Chemical Corporation (Hooker)
Purchases Manager—Raw Materials & Containers, Hooker
Purchases Manager—Construction & Engineered Equipment, Hooker
Purchases Manager—Field Purchasing & Administration, Hooker
Purchases Manager—Energy & Asset Utilization, Hooker
Director of Purchasing—Sel-Rex Division, Oxy Metal Finishing Corporation (Exy Metal)
Director of Purchasing—Udylite Division, Oxy Metal
Director of Purchasing—Parker Division, Oxy Metal

APPENDIX 3

Vice President—Sales, Hooker Chemical Corporation (Hooker)
Sales Manager—Solvents, Electrochemical Division, Hooker
Industry Marketing Manager—Solvents, Electrochemical Division, Hooker
Sales Manager—Chlor Alkali, Electrochemical Division, Hooker
Western Sales Manager, Electrochemical Division, Hooker
Marketing Manager—Pulp Mill Services, Electrochemical Division, Hooker
Sales Manager—Industrial Chemicals, Specialty Chemicals Division, Hooker
Sales Manager—Toulene Intermediates, Specialty Chemicals Division, Hooker
Industry Marketing Manager—Plastic Chemicals, Specialty Chemicals Division, Hooker
Marketing Manager—Molding Materials, Durez Division, Hooker
Marketing Manager—Industrial Resins & Foundry Materials, Durez Division, Hooker
Supervisor Field Sales—Polyesters & Foams, Durez Division, Hooker
Marketing Manager—Chemicals, Ruco Division, Hooker
Sales Manager—Film & Sheeting, Ruco Division, Hooker
Vice President—Sales, Oxy Metal Finishing Corporation

IN THE MATTER OF

DIAMOND SHAMROCK CORPORATION

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

Docket C-2493. Complaint, Mar. 18, 1974—Decision, Mar. 18, 1974

Consent order requiring a Cleveland, Ohio, chemical manufacturer and explorer and producer of crude oil and natural gases, among other things to cease entering into reciprocal dealings or understandings which systematically use actual or potential purchases to obtain or increase sales to certain companies.

Appearances

For the Commission: *Harold G. Munter* and *Louis Jordan.*

For the respondent: *Richard W. Pogue* of *Jones, Day, Cockley & Reavis,* Cleveland, Ohio.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (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 Diamond Shamrock Corporation has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint stating the following:

PARAGRAPH 1. Respondent Diamond Shamrock Corporation (hereinafter "Diamond") is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business located at 1100 Superior Avenue, Cleveland, Ohio.

PAR. 2. Diamond's principal business is the manufacture and sale of chlorine and chlorine by-products, alkalis, silicates, chromates, organic chemicals, specialty chemical, fine chemicals, plastics, polyvinyl and coke and the exploration for and the production of crude oil and natural gases. Diamond's total assets as of Dec. 31, 1971, were $702,924,000. Diamond's total net sales for 1971 were $573,074,000 and it ranked 214th on *Fortune Magazine's* 500 Largest Industrial Companies list for 1971.

PAR. 3. In the course and conduct of its business as described above, Diamond has been and is now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, in that it has shipped and sold its products in the United States or caused them to be transported from its various places of manufacture and business for sale to other companies with places of business located in the several States of the United States.

PAR. 4. Except to the extent that competition has been frustrated, hindered, lessened and eliminated as hereinafter set forth, Diamond has been and is now engaged in competition with firms, partnerships and corporations engaged in the manufacture and marketing of the products described in Paragraph Two, above.

PAR. 5. In the course and conduct of its business as described above Diamond has been and is now engaged in unfair methods of competition and unfair acts and practices in commerce as described in Paragraph Three, above, in violation of Section 5 of the Federal Trade Commission Act in that Diamond has systematically utilized its actual or potential purchases to obtain or increase sales of its products, services or raw materials to certain companies.

In utilizing its purchases, as described above, to obtain or increase sales, Diamond has engaged in the following acts and practices but not limited thereto:

A. Compiled, coordinated or maintained sales and purchase informa-

tion which related Diamond's purchases from one or more companies to Diamond's sales to one or more companies.

B. Disclosed sales information to purchasing personnel or persons who by virtue of their responsibilities are able to influence purchases.

C. Utilized or attempted to utilize sales information to decide who should be a supplier or the extent to which a company should be a supplier of Diamond.

D. Disclosed purchase information to sales personnel or persons who by virtue of their responsibilities are able to influence sales.

E. Utilized or attempted to utilize purchases information to decide who should be a customer or to what extent a company should be a customer of Diamond.

F. Communicated with certain companies for the purpose of ascertaining, developing or furthering a relationship between Diamond's purchases from and its sales to such companies.

G. Purchased or agreed to purchase from certain companies on the understanding or condition that such companies would purchase from Diamond or its designees.

H. Purchased from certain companies in an attempt to induce such companies to purchase from Diamond.

I. Decreased or discontinued purchases from certain companies because such companies would not purchase or increase their purchases from Diamond.

PAR. 6. The acts and practices of Diamond, as alleged above, have had and still have the capacity, tendency and effect of (a) foreclosing actual or potential suppliers of Diamond, (b) foreclosing competitors of Diamond from selling to actual or potential suppliers of Diamond, (c) giving Diamond an unfair competitive advantage over its competitors or (d) depriving its competitors or actual or potential suppliers of full and free competition in the market place.

PAR. 7. The aforesaid acts and practices of Diamond constitute a restraint of trade and an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter

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

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

1. Respondent Diamond Shamrock 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 1100 Superior Avenue, Cleveland, Ohio.

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

ORDER

For the purposes of this order, the definitions below shall apply, although words of inclusion used herein are not words of limitation:

"Respondent Diamond" includes Diamond Shamrock Corporation, a corporation, its subsidiaries, successors, and assigns. "Respondent Diamond" shall not include Pickands, Mather & Co. ("PM"), Diamond Shamrock Oil & Gas Company ("Oil & Gas"), subsidiaries of PM or Oil & Gas, or successors and assigns of PM or Oil & Gas.

"Company" includes any business entity and its subsidiaries.

"Purchase" and "purchases" include any receipt of products, services, or raw materials from another company in exchange for money, products, services, or raw materials, other than any such receipt in connection with any transaction not prohibited by this order.

"Sell" and "sales" include any conveyance of products or raw materials to, or any performance of services for another company in exchange for money, products, services, or raw materials, other than any such conveyance in connection with any transaction not prohibited by this order.

"Personnel" includes officers, directors, employees agents and representatives.

"Purchasing decision" includes any decision as to the selection of any supplier, the allocation of purchases among suppliers, the purchase of any products, services or raw materials, the failure or refusal to place any company on a bidders list, the failure or refusal to designate any company as a qualified bidder, the selection of a winning bidder, or the continuance, discontinuance, increase or decrease of purchases from any supplier.

I

It is ordered, That respondent Diamond, its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, shall forthwith cease and desist from:

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

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

c. Communicating to another company that:

1. respondent Diamond's purchasing decisions will or may be conditioned upon or related to sales by respondent Diamond or any other company;

2. sales by respondent Diamond will or may be conditioned upon or related to purchases by respondent Diamond or any other company.

Nothing contained in Subparagraphs a., b., or c. shall prevent respondent Diamond from entering into, adhering to, or performing under any contractual term pursuant to which the volume of a product, service, or raw material purchased or sold depends upon amounts of said product, service, or raw material used or resold by the purchaser.

d. Discussing, comparing, exchanging, or utilizing data regarding actual or potential sales by respondent Diamond to any actual or potential supplier in making any purchasing decision;

e. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales of the nature prohibited by this order;

f. Preparing or maintaining statistical data which compares or otherwise relates respondent Diamond's actual or potential purchases from a company to its actual or potential sales to such company;

g. Causing or permitting any of respondent Diamond's personnel whose primary duties are to directly obtain sales on behalf of respondent Diamond, including, but not limited to, respondent Diamond's personnel holding any of the positions listed in Appendix 2, hereof, to:

1. engage in purchasing;

2. obtain statistical data or other information which shows actual or potential purchases from any company;

3. specify or recommend to any other of respondent Diamond's personnel that any purchasing decision should be made because of the status of any company as an actual or potential customer;

h. Causing or permitting any of respondent Diamond's personnel whose primary duties are to directly purchase on behalf of respondent Diamond, including, but not limited to, respondent Diamond's personnel holding any of the positions listed in Appendix 3, hereof, to:

1. engage in obtaining or attempting to obtain sales;

2. obtain statistical data or other information which shows actual or potential sales to any company;

3. specify or recommend to any other of respondent Diamond's personnel that sales could or should be made to any company because of the status of such company as an actual or potential supplier.

The obligations imposed under Paragraphs d., f., g., and h. shall terminate and cease to be effective on and after the tenth (10th) anniversary of the date of this order.

II

It is further ordered, That respondent Diamond shall, within thirty (30) days subsequent to the date of this order, withdraw (and provide for continued isolation of):

a. From the possession, custody, and control of all of its personnel holding any of the positions listed in Appendix 2, hereof, all statistical data and other information which shows actual or potential purchases from another company;

b. From the possession, custody, and control of all of its personnel holding any of the positions listed in Appendix 3, hereof, all statistical data and other information which shows actual or potential sales to another company.

III

It is further ordered, That respondent Diamond shall within thirty (30) days subsequent to the date of this order:

a. Issue a copy of Attachment A, hereof, together with a copy of this order, to each of its personnel who has, at any time since Jan. 1, 1970, held any of the positions listed in Appendices, 1, 2 or 3, hereof, or who has compiled or distributed statistical sales or purchasing data, or who has directed or supervised such compilation or distribution;

b. Insert and maintain the language of Attachment A, hereof, within all manuals and other such documents which set out respondent Diamond's policies or procedures for purchasing or for obtaining sales or its policies relating to the compilation or distribution of statistical purchase or sales data.

c. Instruct each of its personnel holding any of the positions listed in Appendix 3, hereof, to refrain from purchasing from a company with the purpose or effect of promoting or inducing sales to such company.

IV

It is further ordered, That respondent Diamond shall, within sixty (60) days subsequent to the date of this order mail a copy of Attachment B, hereof, together with a copy of this order, to:

a. Each company from which it has, in any of the three (3) calendar years preceding the date of this order, made purchases in excess of fifty thousand dollars ($50,000) in value;

b. Each company to which it has, in any of the three (3) calendar years preceding the date of this order, made sales in excess of fifty thousand dollars ($50,000) in value.

V

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

VI

It is further ordered, That respondent Diamond shall, within sixty (60) days subsequent to the date of this order cause each of its then current personnel who holds any of the positions listed in Appendix 1,

or 3, hereof, to complete and furnish to respondent Diamond's legal department a statement in the form of Attachment C, hereof.

VII

It is further ordered, That for a period of three years from the date of this order, respondent Diamond shall:

a. Distribute a copy of Attachment A, hereof, together with a copy of this order, to each of its personnel who, at any time subsequent to the date of this order, succeeds to any of the positions listed in Appendix 1, 2 or 3, hereof;

b. Cause each of its personnel referred to in Paragraph a., above, to complete and furnish to respondent Diamond's law department a statement in the form of Attachment C, hereof, within 30 days after succeeding to any position listed in Appendix 1, 2 or 3, hereof.

VIII

It is further ordered, That respondent Diamond shall submit to the Federal Trade Commission, within sixty (60) days subsequent to the third (3rd) anniversary of the date of this order, all statements which it has received pursuant to Sections VI and VII, above.

IX

It is further ordered, That respondent Diamond shall within sixty (60) days subsequent to the date of this order, file with the Federal Trade Commission a written report setting forth in detail the manner and form in which it has complied with this order, including, but not limited to the following:

a. The name and title of each individual to whom copies of Attachment A, hereof, and this order were issued pursuant to Section III, above;

b. The name of each company to which copies of Attachment B, hereof, and this order were mailed pursuant to Section IV, above;

X

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

XI

It is further ordered, That nothing contained in this order shall:

a. Prohibit respondent Diamond from entering into arrangements (whether tolling, purchase and sale or otherwise) for the conversion or fabrication of products or raw materials, whether such conversion or fabrication operations are performed by or for respondent Diamond;

b. Prohibit respondent Diamond from contracting for construction work or for the manufacture or installation of equipment or facilities for its own use on the condition that respondent Diamond's products, goods or services are to be used in the performance of such contracts;

c. Prohibit respondent Diamond from offering, in connection with the sale of its products or goods, to purchase from or convert for purchasers thereof byproducts, such as scrap and spent acid, generated by them in their operations in an amount and of a kind which does not exceed the amount and kind of byproduct such as scrap and spent acid, normally generated by them in the use of the respondent Diamond's products or goods; *Provided, however*, That such purchasers shall not be obligated to sell such byproducts to respondent Diamond or to have them converted by respondent Diamond as a condition of respondent Diamond's sale to such purchasers;

d. Prohibit respondent Diamond from receiving or conveying products, services or raw materials under any term of any agreement or other mutual undertaking where such term provides for the exchange of products, services or raw materials of like or substantially like kinds.

e. Prohibit respondent Diamond from receiving or conveying products, services, or raw materials under any term of any agreement or other mutual undertaking by which a supplier or potential supplier of a product, service or raw material in short supply requires respondent Diamond, as a condition of purchase by respondent Diamond, unilaterally imposed by such actual or potential supplier, to supply certain products, services or raw materials to that supplier or potential supplier.

f. Prohibit respondent Diamond's personnel holding any of the positions listed on Appendix 2, hereof, and followed by brackets ([]), from purchasing products, services, or raw materials for purposes of resale by respondent Diamond in the same or altered form; *Provided, however*, That such purchasing does not have the purpose or effect of developing, facilitating, or furthering any relationship between purchases and sales of the nature prohibited by this order.

g. Prohibit respondent Diamond's personnel holding any of the positions listed on Appendix 3, hereof, from making any sales of products, raw materials, capital goods, or inventory which is defective, obsolete, or similarly unusable; *Provided, however*, That such sales do not have the purpose or effect of developing, facilitating, or furthering any relationship between purchases and sales of the nature prohibited by this order;

Provided, however, That nothing in this paragraph or any of its subparagraphs shall be construed as having application to, or limiting in any manner whatsoever, any other proceeding or investigation initiated by the Federal Trade Commission, and that the Federal Trade Commission reserves the right to take further action including the issuance of a complaint with respect to transactions of the nature described in this paragraph and each of its subparagraphs in the event that it shall at any time in the future have reason to believe that any of such transactions may violate any of the statutes administered by it.

XII

It is further ordered, That respondent Diamond shall, for a period of five (5) years subsequent to the date of this order, maintain and retain:

a. All written contracts and agreements of the nature described in Paragraph XI-d, above, and

b. Documents sufficient to disclose the terms and substance of all oral contracts and agreements of the nature described in Paragraph XI-d, above;

together with documents sufficient to show the total annual dollar value and/or volume of deliveries and receipts pursuant to each such written or oral contract and agreement.

ATTACHMENT A

Re: Federal Trade Commission Order Concerning the Selling and Purchasing Activities of Diamond Shamrock Corporation and its Subsidiaries.

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

General

No personnel of the Company shall:

1. discuss, compare, or exchange statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between our purchases and our sales.

2. prepare, maintain or in any manner obtain statistical data which compares or otherwise relates our actual or potential purchases from a company to our actual or potential sales to such company.

Purchasing

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

No purchasing personnel shall:

1. engage in obtaining or attempting to obtain sales;

2. in any manner obtain statistical data or other information which shows actual or potential sales to any company;

3. specify or recommend to any of our non-purchasing personnel that sales could or should be made to any company.

Selling

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

No sales personnel shall:

1. engage in purchasing;
2. in any manner obtain statistical data or other information which shows actual or potential purchases from any company;
3. specify or recommend to any of our non-sales personnel that purchases could or should be made from any company.

The provisions of the Order contain various conditions, and in the case of any conflict between the above statement of policies and guidelines and the terms of the Order, the latter shall prevail.

ATTACHMENT B

To Our Customers and Suppliers:

Pursuant to the attached Order of the Federal Trade Commission, we herewith advise you that it is the policy of Diamond Shamrock Corporation and its subsidiaries to purchase solely on the basis of price, quality, and service. We wish to assure you that our purchases will in no way be conditioned upon or related to our sales to you or any other company.

Chief Executive Officer

ATTACHMENT C

Name and address
Position

I have been supplied with a copy of the Order of the Federal Trade Commission against Diamond Shamrock Corporation dated _____, and a copy of Attachment A thereto. I have read those documents and have received an explanation of the Order from counsel for the Company and counsel has answered my questions concerning it. I understand that the Order may affect the manner in which my duties may be conducted on behalf of the Company and that violation of its provisions may subject me to disciplinary proceedings which may include dismissal from my employment. I further understand that I may in the future be required to respond to inquiries by authorized representatives of the Federal Trade Commission regarding the manner in which I have conducted such duties. Accordingly, I am filing for my reference a copy of the Order and Attachment A thereto.

_____

Signature

APPENDIX 1

EXECUTIVE PERSONNEL—DIAMOND SHAMROCK CORPORATION

Chairman of the Board and Chief Executive Officer
President and Chief Operating Officer
Executive Vice President, Corporate Development

Vice President, Finance
Vice President, Research & Corporate Development
Vice President, Administration
Vice President and Secretary
Treasurer
Controller

EXECUTIVE PERSONNEL—DIAMOND SHAMROCK CHEMICAL COMPANY

President
Vice President, Diamond Shamrock Corporation
Executive Vice President
Group Vice President
Senior Vice President
Vice President

APPENDIX 2

Personnel whose primary duties are directly to obtain sales on behalf of Respondent Diamond:

AG CHEM SALES SPECIALIST
Ag Chem Division
ASSISTANT DISTRICT SALES MANAGER
District Sales Offices
ASSISTANT PRODUCT MANAGER [ ]
Electro Chemicals Division-Soda Products Division
AUTOMOTIVE ACCOUNT REPRESENTATIVE
Dacromet
DIRECTOR OF SALES
Industrial Chemicals Sales Office
DISTRICT PRODUCT MANAGERS
District Sales Offices
DISTRICT SALES MANAGERS
District Sales Offices
DIVISION SALES MANAGER [ ]
Electro Chemicals Division
FIELD SALES MANAGER
Nopco Division
FIELD SALES SUPERVISOR
Nopco Division
GROUP MARKET MANAGER [ ]
Nopco Division
MANAGER-MARKETING AND SALES [ ]
Soda Products Division
MANAGER SANURIL SYSTEMS
Concord
MANAGER SANILEC SYSTEMS
Concord
MARKET DEVELOPMENT SPECIALIST
Concord
MARKET MANAGER [ ]
Nopco Division
MARKETING SPECIALIST
Nopco Division
NATIONAL ACCOUNTS MANAGER
Agricultural Chemicals Division
NATIONAL ACCOUNTS SALES REPRESENTATIVE
Fine Chemicals Division
NATIONAL ACCOUNTS SUPERVISOR
Nopco Division
PRODUCT MANAGER [ ]
Ag Chem Division-Soda Products Division-Electro Chemicals Division
REGIONAL MANAGER
Plastics Division
REGIONAL SALES MANAGER
Ag Chem Division-Fine Chemicals Division
SALESMAN
Chemetals Division-Nopco Division-Fine Chemicals Division-District Sales Offices
SALES COORDINATOR
Chemetals Division-Nopco

Division
SALES MANAGER
Chemetals Division-Dacromet-Nopco Division-Harte & Co.
SALES REPRESENTATIVE
Harte & Co.
SALES TECHNICAL SERVICE MAN
Plastics Division
SENIOR TECHNICAL SALES REPRESENTATIVE
Plastics Division
TECHNICAL SALES REPRESENTATIVE
Nopco Division-Plastics Division
TECHNICAL SPECIALIST
Concord
VICE PRESIDENT, MARKETING
Harte & Co.

APPENDIX 3

Personnel whose primary duties are directly to purchase on behalf of Respondent Diamond:

ASSISTANT PURCHASING AGENT
Nopco Division
BUYER
Purchasing Department-Deer Park Works
JUNIOR BUYER
Purchasing Department
MANAGER ADMINISTRATION
Chemetals Division
MANAGER PRODUCT DEVELOPMENT AND COORDINATION
Fine Chemicals Division
MANAGER/PURCHASING AND STORES
Purchasing Department
MATERIALS MANAGER
Purchasing Department
NATIONAL ACCOUNTS/FLEET ADMINISTRATION
Purchasing Department
PLANT PURCHASING AGENT
Purchasing Department
PROJECT COORDINATOR
Purchasing Department
PURCHASING AGENT
Purchasing Department
PURCHASING FIELD ADMINISTRATOR
Purchasing Department
PURCHASING MANAGER
Purchasing Department
PURCHASING STORE MANAGER
Deer Park Works
SENIOR BUYER
Purchasing Department-Deer Park Works
SUPERVISOR OF CONSTRUCTION
Purchasing Department
WORKS PURCHASING AGENT
Deer Park Works

IN THE MATTER OF

FOOD FAIR STORES, INC., ET AL.

Docket 8935. Interlocutory Order, Mar. 19, 1974

Order denying respondents' application for review, including briefs and oral argument, of administrative law judge's denial of motion to quash certain subpoenas *duces tecum*.

Appearances

For the Commission: *Lewis F. Parker* and *Robert W. Fleishman.*

For the respondents: *Alex Akerman, Shipley, Akerman, Stein & Kaps,* Wash., D.C., *Warren J. Kaps, Stein & Rosen,* New York City and *Stein, Mitchell & Mezines,* Wash., D.C.

ORDER DENYING APPLICATION FOR REVIEW

By order dated Feb. 20, 1974, the administrative law judge: (1) refused to reconsider his denial of respondents' motion to quash certain subpoenas *duces tecum*, and (2) pursuant to Section 3.23(b) of the Commission's Rules of Practice, granted respondents leave to file an application for review on the following question:

> Whether the Commission's policy against "comprehensive postcomplaint investigations" is contravened by a subpoena demanding numerous classes of documents covering the entire life of the respondent Amterre over a span of 19 years, and relating to facts concerning the relationship between the corporate respondents as alleged in the complaint and denied in respondents' answer.

Pursuant to this order, respondents have filed such an application requesting further briefing and oral argument. Respondents further request that the Commission direct the filing of briefs within five days after acting upon the request for authorization to participate in this matter filed by Messrs. Basil J. Mezines and Glenn A. Mitchell of Stein, Mitchell and Mezines.

Upon consideration of the aforesaid application and complaint counsel's response thereto, as well as the administrative law judge's order of Feb. 20, 1974, the Commission finds insufficient reason for interlocutory review. The Commission's "policy against 'comprehensive postcomplaint investigations,' " as expressed in *All State Industries of North Carolina, Inc., et al.*, 72 F.T.C. 1020 (1967), was never intended to add to the requirements for issuance of a subpoena *duces tecum* under Part III of the Rules of Practice. *All State Industries of North Carolina, Inc., et al.*, 74 F.T.C. 1591 (1968). Despite repeated attempts to raise this policy as grounds for quashing such a subpoena, it was recently described as an administrative guideline between the Commission and its staff. *Exxon Corporation, et al.*, Order Quashing Investigational Subpoena, Docket 8934, July 27, 1973 at 2 [83 F.T.C. 223]. It does not constitute grounds for quashing the subpoenas in question. Accordingly,

It is ordered, That respondents' application for review including briefs and oral argument be, and it hereby is, denied.

IN THE MATTER OF

TRI-STATE ALUMINUM, ET AL.

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

Docket C-2494. Complaint, Mar. 19, 1974—Decision, Mar. 19, 1974

Consent order requiring a Wildwood, Ga., seller and distributor of residential siding and other products, among other things to cease misrepresenting the amount, type and extent of the credit terms arranged for purchases; that products, installations or services are guaranteed; prices or savings, and offers are limited or restricted as to time; failing to maintain adequate records; using schemes or devices to obtain leads or prospects for the sale of products or services; and discouraging the purchase of or disparaging its advertised products.

Appearances

For the Commission: *Edward J. Carnot.*

For the respondents: *Roger R. Auman, Auman and Miller,* Trenton, Ga.

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 Tri-State Aluminum, a corporation and A.E. Whitworth and William M. Townsend, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Tri-State Aluminum is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Box 125, in the city of Wildwood, State of Georgia.

Respondents A.E. Whitworth and William M. Townsend are individuals and the principal officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of residential siding and other products to the public.

PAR. 3. 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 Georgia to purchasers thereof located in Tennessee, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase and installation of aluminum

siding material, respondents and their salesmen have made numerous statements and representations in their advertising and promotion material and through oral statements and representations with respect to their purchasers' savings and the durability of their products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

EZ Terms-Bank Rates
100% Guaranteed Genuine Aluminum Siding
Limited Offer
Time Limit on this Offer is Five Days
$488.00 Completely Installed-No Extras

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. Purchasers of their products and installations are granted easy credit terms, without regard to their financial status or their ability to pay by financial institutions with which respondents deal;

2. Certain of respondents' home improvement products are unconditionally guaranteed or guaranteed for life;

3. Their home improvement products and installations are being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of reductions from respondents' regular selling price;

4. Respondents' advertised offer is made for a limited period of time;

5. The offers set out in their advertisements are bona fide offers to sell home improvements products and installations of the kind therein described at the price and on the terms and conditions stated.

PAR. 6. In truth and in fact:

1. Purchasers of respondents' products are not granted easy credit terms without regard to their financial status or their ability to pay by financial institutions with which respondents deal;

2. Respondents' home improvement products are not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided is subject to numerous terms, conditions and limitations respecting the duration of the guarantee and the extent and manner of performance thereunder;

3. Respondents' products are not being offered for sale at special or reduced prices and savings are not afforded purchasers because of reductions from respondents' regular selling prices;

4. Respondents' advertised offer is not made for a limited time only. Said merchandise is advertised regularly at the represented prices and

on the terms and conditions therein stated;

5. Respondents' said advertised offers are not genuine or bona fide offers, but are made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, respondents' salesmen or representatives disparage the advertised product and otherwise discourage the purchase thereof and attempt to sell and frequently do sell a different and more expensive product instead of the advertised product for which the customer was originally solicited.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding.

PAR. 8. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements were and are true, and into the purchase of substantial quantities of respondents' aluminum siding.

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

DECISION AND ORDER

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

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

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

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

1. Respondent Tri-State Aluminum is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at Box 125, city of Wildwood, State of Georgia.

Respondents A.E. Whitworth and William M. Townsend are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Tri-State Aluminum, a corporation, and A.E. Whitworth and William M. Townsend, individually and as officers of said corporation, and respondents' agents, representatives and employees, and their successors and assigns, directly or through any corporate or other device or under any other name or names, in connection with the advertising, offering for sale, sale and distribution of home improvement materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that purchasers of respondents' products, installations or services are granted easy or assured credit terms by financial institutions with which respondents deal; or misrepresenting in any manner the amount, type, extent or any other facet of the credit terms respondents arrange or may arrange for their purchasers;

2. Representing, directly or by implication, that any of respondents' products, installations or services are warranted or

guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such warranty or guarantee;

3. Representing, directly or by implication, that any price for respondents' products, installations or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products, installations or services have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, their prices or the savings available to their purchasers;

4. Representing, directly or by implication, that any of respondents' offers to sell products, installations or services are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually in force and in good faith adhered to;

5. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims of the type discussed in Paragraphs Three and Four of this order are based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations of the type described in Paragraphs Three and Four of this order can be determined;

6. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other products, installations or services;

7. Making representations purporting to offer products, installations or services for sale when the purpose of such representations are not to sell the offered products, installations or services but to obtain leads or prospects for the sale of other products, installations or services at higher prices;

8. Discouraging the purchase of or disparaging any product, installation or service which is advertised or offered for sale by respondents.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or

employment in which he is engaged as well as a description of his duties and responsibilities.

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

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

IN THE MATTER OF

DESIGN INTERNATIONAL CORPORATION, ET AL.

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

Docket C-2495. Complaint, Mar. 19, 1974—Decision, Mar. 19, 1974

Consent order requiring a Boston, Mass., promoter of the "Medical Implant Hair Replacement System," among other things to cease misrepresenting that its "System" does not involve wearing a hairpiece or toupee; that the device becomes a part of the anatomy like natural hair, has characteristics of natural hair, and can be cared for by the individual without professional or skilled assistance or additional costs. The order further requires clear and conspicuous disclosures involving surgical procedure, discomfort and pain, risk of infection, skin disease and scarring, continuing special care which may involve additional costs; prior consultation with a physician; and right of rescission of contracts.

Appearances

For the Commission: *Harold F. Moody.*
For the respondents: *Pro se.*

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 Design International Corporation, a corporation, doing business as Design International Hair Clinics and Louis S. Gordon, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Design International Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 132 Boylston Street, Boston, Mass.

Respondent Louis S. Gordon is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the operation of the Design International Hair Clinics and promote on their own behalf, among others, the Medical Implant Hair Replacement System, (hereinafter sometimes referred to as the "System"). The system involves a surgical procedure whereby a stainless steel thread, treated with Teflon, is used to stitch from five to nine hollow metal cylinders or clips onto the scalps of respondents' customers. A polyethylene gridwork base, to which wefts of hair have been sewn, is then affixed to the cylinders or clips.

Design International Hair Clinics (hereinafter sometimes referred to as Clinics) sell and maintain the system, except that the surgical procedure itself is performed by a medical doctor and the attachment of the gridwork base with hair affixed thereto is performed by another hair replacement company.

Subsequent to the attachment, Clinics cuts, styles and maintains the system.

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across state lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondents have maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and cause to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the Medical Implant Hair Replacement System, respondents, directly have made numerous statements and representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

An Unconditionally Guaranteed Implant
OUR PROVEN METHOD IS MEDICALLY ANALYZED MEDICALLY ACCEPTED MEDICALLY ATTACHED

* * * * * * *

SAFE . SECURE . PERMANENT

* * * * * * *

SWIM IN IT—SHOWER IN IT—EXERCISE IN IT—DANCE IN IT

* * * * * * *

NOW! AN AMAZING UNIQUE MEDICAL IMPLANT
DISCOVERY JUST LIKE YOUR OWN PERMANENT HAIR
WITHOUT WEAVING OR TRANSPLANTS NO FUSS, NO MUSS, NO GLUE OR TAPE

* * * * * * *

No return visits for tightening, taping, knoting

* * * * * * *

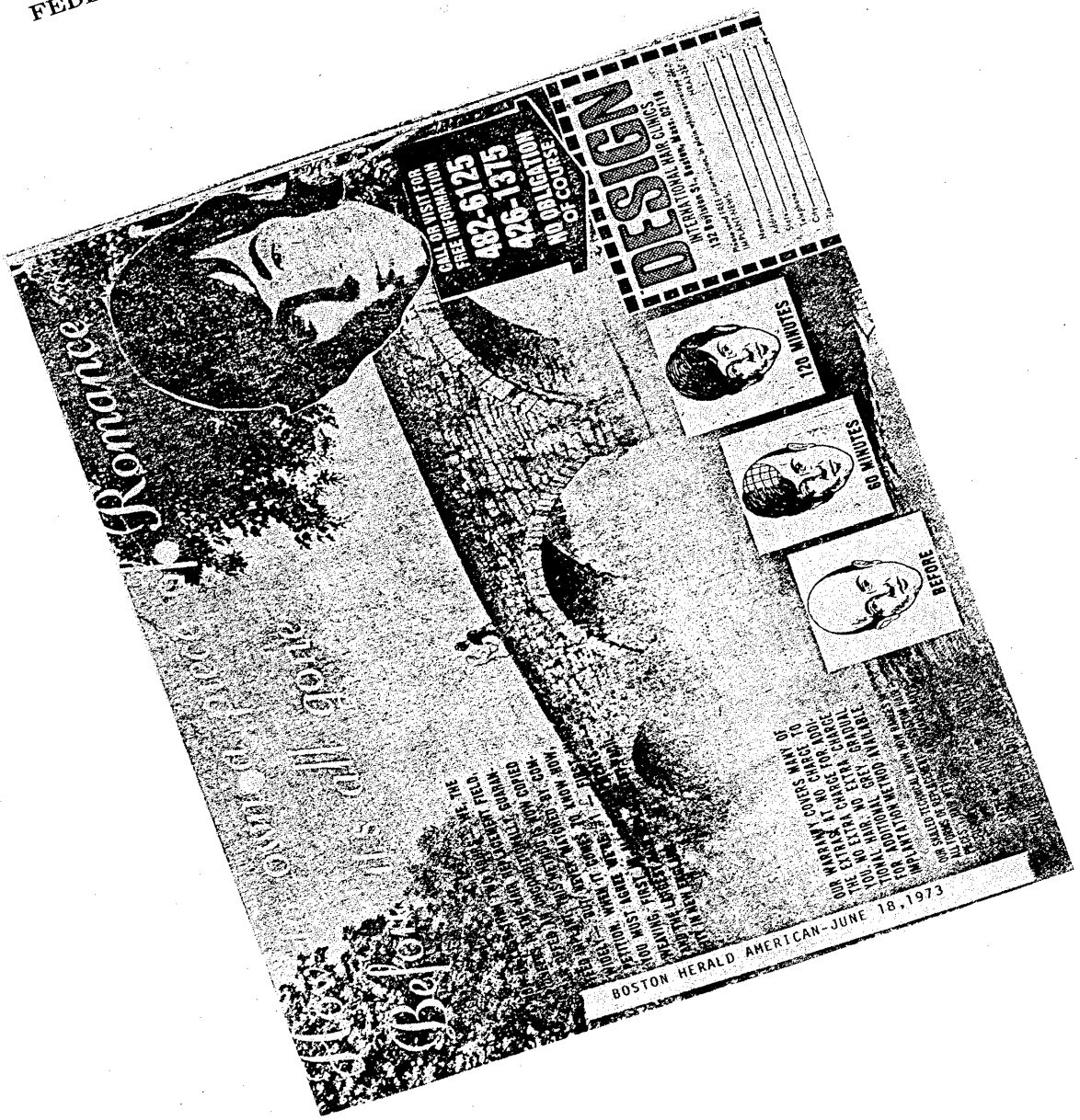
The actual medical work performed is relatively a painless surgical procedure, thus becoming a part of the clients anatomy—like your own hair again

* * * * * * *

Implant permits the client to swim underwater, change hair styles—scratch his own scalp

* * * * * * *


STORES: OPEN MONDAY THRU SATURDAY 10 am TO 10 pm
OVER 10,000 HAPPY CONFIDENT CLIENTS SOLD TO DATE
THE COMPLETE MEDICAL PROCEDURE IS PERFORMED BY A LICENSED PHYSICIAN
MEDICAL IMPLANT NEWS
OUR PROVEN METHOD IS
MEDICALLY ANALYZED
MEDICALLY ACCEPTED
MEDICALLY ATTACHED
NOW IN LESS THAN TWO HOURS— WE, THE PIONEERS IN THE HAIR REPLACEMENT FIELD, CAN OFFER AN UNCONDITIONALLY GUARANTEED IMPLANT. THIS METHOD IS NOW COPIED WIDELY— BUT NEVER MATCHED BY COMPETITION. WHEN IT COMES TO KNOW HOW, YOU MUST AGREE WE'RE #1 — FIRST IN WEAVING, FIRST IN ALL DEVELOPMENTS— AND THE LARGEST HAIR REPLACEMENT FACILITY IN NEW ENGLAND.
OUR WARRANTY COVERS MANY OF THE EXTRAS, AT NO CHARGE TO YOU. NO EXTRA CHARGE FOR ADDITIONAL HAIR, NO EXTRA CHARGE FOR ADDITIONAL GREY. GRADUAL IMPLANTATION METHOD AVAILABLE.
OUR SKILLED TECHNICAL KNOW HOW RANGES IN ALL FORMS OF REPLACEMENT ... CUSTOM HAIR PIECES ... HAIR WEAVING ... AND TRANSPLANTS ... FUSION ...
SAFE • SECURE • PERMANENT.
MAJOR CREDIT CARDS ACCEPTED ...
CALL OR VISIT FOR FREE INFORMATION
482-6125
426-1375
NO OBLIGATION OF COURSE
BEFORE
60 MINUTES
120 MINUTES
DESIGN
INTERNATIONAL HAIR CLINICS
132 Boylston St., Boston, Mass. 02116
Please send FREE information in plain white envelope on IMPLANT NEWS.
MA 7-1
Name
Address
State
Telephone
City
Zip
BOSTON SUNDAY HERALD ADVERTISER-APRIL 22, 1973


Romance
Ballet
DESIGN
INTERNATIONAL HAIR CULTURE
CALL OR VISIT FOR FREE INFORMATION
482-6125
426-1375
NO OBLIGATION
NO COURSE
120 MINUTES
60 MINUTES
BEFORE
BOSTON HERALD AMERICAN-JUNE 18,1973

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning but not expressly set out herein, respondents have represented directly or by implication that:

1. The Medical Implant Hair Replacement System does not involve wearing a hairpiece, or toupee.

2. The hairpiece applied becomes part of the anatomy like natural hair, teeth, fingernails or skin and has characteristics of natural hair, including the following:

(a) The same appearance as natural hair upon normal observation and upon extreme close up examination.

(b) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and shampooing may be performed on it in the same manner as might a person with natural hair.

(c) The wearer may engage in physical activities with as much disregard for his hairpiece as might a person with natural hair.

3. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur charges over and above the charge for installing the system.

4. Respondents' products and the system are sold with an unconditional guarantee, without condition or limitation, for an indefinite period of time.

PAR. 6. In truth and in fact,

1. The system does involve the wearing of a hairpiece or toupee, inasmuch as the affixing of the wefts of hair to the polyethylene gridwork base creates what is essentially a hairpiece or toupee.

2. The hairpiece applied does not become part of the anatomy like natural hair, teeth and fingernails. The system involves Teflon coated stainless steel sutures which are stitched into the scalp by a surgical procedure and which may be rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

(a) It does not have the same appearance as natural hair in a substantial number of instances. It is often discernible as a hairpiece or toupee upon normal observation, and upon extreme close up examination.

(b) It cannot be cared for like regular hair, but requires special care and handling. Strong pulling on the hair, such as may be expected to occur in washing, combing, brushing and shampooing, can cause pain because of the pressure exerted on the sutures in the scalp, may cause bleeding, and may cause the sutures to pull out. As a consequence, washing the hair and scalp requires extra care. Unless extra care is taken while washing the hair and scalp, foreign particles and dead skin tissue tend to accumulate beneath the base and become a significant

source of irritation. The hair styles into which the hairpiece may be combed or brushed without professional treatments are limited.

(c) The wearer may not engage in physical activities with as much disregard for his hairpiece as might a person with natural hair. The wearer must at all times be careful that the hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

3. The wearer cannot in most instances care for the hairpiece himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgical procedure or the continuing presence of Teflon coated stainless steel thread in the scalp may require subsequent visits to a medical doctor. Wearers having some natural hair under the hair applied by respondents would have to have a haircut at regular intervals and such hair would be difficult to cut without skilled assistance. A substantial additional charge for such services would be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color-dyed, loss of dye through washing and normal wear; thus replacement wefts of hair or hairpieces are required at intervals in order to maintain a color match with any nautral hair the wearer may have. Because of the difficulty in washing the hair and scalp described previously in Paragraph Six, assistance is often required to wash the hair.

4. Respondents' products and the system are not guaranteed without condition or limitation for an indefinite period of time. Such a guarantee as may be provided is subject to numerous terms, conditions, and limitations and it fails to set forth the real nature and extent of the guarantee and the manner in which the guarantor will perform thereunder.

The statements and representations set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents, have represented in advertisements the asserted advantages of their system, as hereinbefore described. Respondents have represented their system to be relatively painless, and in no case have respondents' newspaper advertisements disclosed:

(a) That clients may experience discomfort and pain as a result of the surgical procedure, from the Teflon coated stainless steel sutures themselves, and from pulling normally incident to wearing the hairpiece;

(b) That clients will be subject to the risk of irritation, infection, and skin diseases as a result of the surgical procedure and as a result of the Teflon coated stainless steel thread remaining in the scalp; and

(c) That permanent scarring to the scalp may result from the required surgical procedures, and as a result of the Teflon coated stainless steel thread remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to, rejection of the Teflon coated stainless steel thread through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their hair replacement system, respondents entice members of the purchasing public to their clinic with advertisements such as, "How to own a piece of Romance Before it's all gone * * *" and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their clinic. When members of the purchasing public have visited the clinic, they have been subjected to sales pressure, for the purpose of presuading them to sign a contract for the application of the system, and to make a substantial down payment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the Teflon coated stainless steel thread in the scalp. Persons are urged to sign such contracts and make such down payments, through the use of sales presentations employing the following practice, among others:

Inducing prospects to sign contracts and/or make downpayments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the Teflon coated stainless steel thread being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are false and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial competition in commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the Teflon coated stainless steel thread in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period

of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Design International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 132 Boylston Street, Boston, Mass.

Respondent Louis S. Gordon is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Design International Corporation, a corporation, doing business as Design International Hair Clinics or any other trade name or names, its successors and assigns, and Louis S. Gordon, individually and as an officer of said corporation (hereinafter sometimes referred to as "respondents"), and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any hair replacement product or process involving surgical implants (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

2. That after the system has been applied, the hair applied becomes part of the anatomy like natural hair, teeth, and fingernails and has the following characteristics of natural hair;

(a) The same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;

(b) It may be cared for like natural hair where care involves possible pulling on the hair;

(c) The wearer may engage in physical activity and move-

ment with the same disregard for his hair as he would if he had natural hair.

3. That after the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system and that the customer will not incur maintenance costs over and above the cost of applying the system.

4. That respondents' products and the system are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

It is further ordered, That respondents, in advertising and in all oral sales presentations, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of Teflon coated stainless steel sutures in the scalp, to which hair is affixed.

2. By virtue of the surgical procedure involving implantation of Teflon coated stainless steel sutures in the scalp, and by virtue of the Teflon coated stainless steel sutures remaining in the scalp, there is a high probability of discomfort and pain, and a risk of infection, skin disease and scarring.

3. The system has been in use for too short a period of time to determine to a reasonable medical certainty the extent or seriousness of the above-described side-effects, or whether there are other side-effects.

4. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in Subparagraph Two of this paragraph, and such care may involve additional costs for medications and assistance.

5. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided however,* That in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or

less, respondents may substitute the following statement, in lieu of the above requirements:

Warning: This application involves surgery whereby teflon coated stainless steel sutures are placed in the scalp. Discomfort, pain and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, Subparagraphs One through Five, thereof, and that respondents require that such prospective purchasers, subsequent to receipt of such disclosure sheet, consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the probabilities of discomfort and pain, and risks of infection, skin disease, and scarring.

It is further ordered, That no contract for application of respondents' system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents, or after the day on which said contract for application of the system was executed, whichever day is later, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician or after the day on which said contract for application of the system was executed, whichever day is later.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day of the purchaser's

above-described consultation with a duly licensed physician, or after the day on which said contract for application of the system was executed, whichever day is later.

4. Respondents shall obtain from each purchaser a certificate signed by the physician who was consulted as required by this order, such certificate specifying that the said physician has explained to the purchaser the nature of the surgery to be done, and has advised him of the probabilities of discomfort and pain, and risks of infection, skin disease and scarring, and specifying the date and approximate time of the consultation; and respondents shall retain all such certificates for three years.

It is further ordered, That respondents serve a copy of this order upon each physician participating in application of respondents' system, and obtain written acknowledgement of the receipt thereof. Respondents shall retain such acknowledgements for so long as such persons continue to participate in the application of respondents' system.

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

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided*, That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

It is further ordered, That respondents forthwith distribute a copy of this order to each of their operating divisions, offices, departments or affiliated corporations.

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

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

NEW ORLEANS MEATS, INC., doing business as HUTCHESON MEATS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT, SECS. 5 & 12, AND THE TRUTH IN LENDING ACT

Docket C-2496. Complaint, Mar. 20, 1974—Decision, Mar. 20, 1974

Consent order requiring a Kenner, La., seller and distributor of beef and other meat products, among other things to cease using bait advertisements; misrepresenting the price, quality, and quantity of its products; and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Creighton Chandler.*

For the respondents: *Harvey G. Gleason*, New Orleans, La.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that New Orleans Meats, Inc., a corporation, doing business as Hutcheson Meats, and Robert E. Brannan, individually and as officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 New Orleans Meats, Inc., also doing