

## Complaint

## IN THE MATTER OF

## THE SOUTHLAND CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF  
THE CLAYTON ACT

*Docket 9127. Complaint, April 26, 1979—Decision, Feb. 25, 1980*

This consent order requires, among other things, The Southland Corporation (Southland), a Dallas, Texas dairy processor, to refrain for seven years from acquiring, without prior Commission approval: 1) any fluid milk processing plant, distribution facility or route within a 150-mile radius of a Southland fluid milk processing plant or distribution facility; 2) any such company or plant located within a 150- to 500-mile radius of a Southland fluid milk processing plant or distribution facility, which processed more than 26 million pounds of Class I milk within any of the three years prior to the acquisition; or 3) any fluid milk processing company that processes 300 million pounds of Class I milk annually.

*Appearances*

For the Commission: *James R. Chamberlain* and *Robert C. Cheek*.

For the respondents: *Peter K. Bleakley, Arnold & Porter, Wash., D.C.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into an acquisition agreement, which, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

## I. DEFINITION

1. For the purpose of this complaint, the term "San Antonio market area" refers to the Office of Management and Budget's Standard Metropolitan Statistical Area for San Antonio, Texas which is composed of the three counties of Bexar, Comal, and Guadalupe.

## II. THE SOUTHLAND CORPORATION

2. The Southland Corporation ("Southland") is a corporation organized and existing under the laws of the State of Texas with its principal office at 2828 North Haskell Ave., Dallas, Texas.

3. Southland is a major operator and franchisor of convenience food stores doing business almost exclusively under the "7-Eleven" brand name. As of December 31, 1977, Southland owned or franchised 6,357 convenience food stores throughout forty states, the District of Columbia, and Canada.

4. Southland is also one of the nation's largest dairy processors. Since 1960, Southland has acquired approximately twenty-nine other dairy processors and currently sells packaged fluid milk in thirty states and the District of Columbia under twelve strong regional brand names. In 1978 Southland processed over one billion pounds of packaged fluid milk.

5. In the fiscal year ending December 31, 1977, Southland reported total net sales of \$2,536,109,000 of which approximately \$344,807,000 were packaged fluid milk products.

## III. KNOWLTON'S, INC.

6. Knowlton's, Inc. ("Knowlton's") is a corporation organized and existing under the laws of the State of Texas with its principal office at 1314 Fredericksburg Road, San Antonio, Texas.

7. Knowlton's, a family owned firm, is the largest, or one of the largest, independent dairy processors in the San Antonio market area. In 1978, Knowlton's processed approximately 44,857,000 pounds of packaged fluid milk.

8. Knowlton's also owns and operates nine milk and ice cream stores in the San Antonio market area.

9. In 1978 Knowlton's reported \$10,988,416 total net sales of which \$4,009,000 were packaged fluid milk products.

## IV. JURISDICTION

10. At all times relevant herein, Southland and Knowlton's have engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, and their activities, including those challenged herein, are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended.

## V. THE ACQUISITION AGREEMENT

11. On or about January 31, 1979, Southland and Knowlton's entered into an agreement whereby Southland would acquire 100% of Knowlton's assets, including the dairy processing plant and the nine milk and ice cream stores, for approximately \$3.3 million. The acquisition is scheduled to be consummated on April 30, 1979.

## VI. TRADE AND COMMERCE

12. The relevant line or relevant lines of commerce are the processing, distribution and sale of packaged fluid milk and the processing and wholesale distribution of packaged fluid milk.

13. A relevant section of the country is the San Antonio market area.

14. The lines of commerce described in Paragraph 12 in the San Antonio market area are highly concentrated.

## VII. ACTUAL COMPETITION

15. From its Oak Farms plants in Dallas and Houston, Southland ships packaged fluid milk to its distribution center in San Antonio, Texas. Southland then sells packaged fluid milk from this distribution center throughout the San Antonio market area.

16. Knowlton's sells packaged fluid milk in the San Antonio market area from its one plant located in San Antonio.

17. Southland and Knowlton's are presently and have been for many years actual competitors for packaged fluid milk sales in the San Antonio market area.

## VIII. EFFECTS: VIOLATIONS CHARGED

18. The effects of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant markets, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and the acquisition agreement is an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) actual competition between Southland and Knowlton's for packaged fluid milk sales in the San Antonio market area will be eliminated;

(b) already high levels of concentration will increase;

(c) Knowlton's, the largest, or one of the largest, independent dairies

in the market and a known price competitor will be eliminated from competition; and

(d) additional acquisitions and mergers between dairy processors may be fostered, causing a further substantial lessening of competition and increasing concentration.

19. The acquisition, if consummated, would for the reasons set forth herein, constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

20. By entering into the agreement which would give rise to the violation described in Paragraph 18, herein, Southland and Knowlton's have violated Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45.

Commissioner Pitofsky did not participate.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Southland Corporation is a corporation organized, existing and doing business under and by virtue of the laws of

the State of Texas with its office and principal place of business located at 2828 N. Haskell Ave., Dallas, Texas.

Respondent Knowlton's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1314 Fredericksburg Road, San Antonio, Texas. Since on or about June 15, 1979, all of Knowlton's assets have been owned by Southland.

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

#### DEFINITIONS

For purposes of this order the following definitions shall apply:

(a) "Class I Milk" means packaged fluid whole milk, partially skim milk (approximately 2% butterfat or less), skim milk, buttermilk, cultured fluid milk products (except yogurt), flavored milk, and flavored milk drinks.

(b) "Southland" refers to The Southland Corporation, its subsidiaries, divisions, affiliates, successors and assigns.

#### I.

*It is ordered*, That Southland shall refrain, for a period of seven (7) years from the date of service upon it of this order, from acquiring, directly or indirectly, without prior approval of the Federal Trade Commission: (i) Any fluid milk processing plant, distribution facility or route (except those serving fluid milk processed by Southland exclusively) within a 150-mile radius of a Southland fluid milk processing plant or distribution facility; (ii) Any fluid milk processing company or plant located within a radius of between 150 and 500 miles of a Southland fluid milk processing plant or distribution facility which in any of the three years prior to the acquisition processed more than 26 million pounds of Class I milk; or (iii) Any fluid milk processing company that processes 300 million pounds of Class I milk annually; *provided, however*, that if the Federal Trade Commission at any time during the seven (7) year period of this order should modify its Criteria for Assessing Future Mergers, as set forth in the Commission's Enforcement Policy With Respect to Mergers in the Dairy Industry, the Commission will modify this order to conform to the modified Criteria.

## II.

*It is further ordered,* That Southland shall within thirty (30) days after service upon it of this order file with the Commission a report setting forth in detail the location of its existing fluid milk processing plants, distribution facilities and routes (including those operated by Knowlton's). Thereafter annually for seven years, Southland shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order and shall include in such report a current list of Southland's fluid milk processing plants, distribution facilities and routes.

## III.

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

Commissioner Pitofsky did not participate.

## Modifying Order

## IN THE MATTER OF

## FORD MOTOR COMPANY, ET AL.

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

*Docket 9073. Decision, March 29, 1979—Modifying Order, Feb. 26, 1980*

This order reopens and modifies a consent order issued on March 29, 1979, 44 FR 25630, 93 F.T.C. 402, so that Paragraph II (C) (7) of the order provides for a waiver of customers' surplus rights in the event that a dealership retains a repossessed vehicle for its own use, rather than for resale. This brings the order into conformity with one aspect of an order issued against Francis Ford, Inc. on September 21, 1979 under the same docket number, 44 FR 62481, 94 F.T.C. 564.

## ORDER REOPENING AND MODIFYING CONSENT ORDER

By petition of November 26, 1979, respondents Ford Motor Company and Ford Motor Credit Company (hereafter "Ford respondents") have asked the Commission to modify Paragraph II C.(7) of the consent order entered by the Commission against these respondents on March 29, 1979, in order to conform with a less restrictive provision of the litigated order in this docket entered against respondent Francis Ford, Inc. on September 21, 1979. An "Order to Show Cause" as to why the requested change should not be made, dated January 15, 1980, has elicited no objection.

Paragraph VII B. of the consent order provides that if a final order is issued in Dkts. 9073, 9074, or 9075 that imposes less restrictive standards in certain enumerated respects than does the consent order, the Commission shall reopen the consent order within 120 days of a petition to do so and modify the consent order to conform with the less restrictive provisions contained in the other order.

Although the less restrictive order upon which Ford respondents rely for their request has not yet become final, due to the pendency of an appeal, no purpose would be served by delaying modification of the Consent Order until such time as the appeal is resolved, inasmuch as the appeal by Francis Ford is hardly likely to result in imposition of a *more* restrictive standard than the Commission has imposed. Modification now will expedite achievement of uniform treatment of automobile dealers which is a primary purpose of Paragraph VII B. Therefore,

*It is ordered,* That the consent order in this docket be reopened for the limited purpose of effecting the following changes.

*It is further ordered,* That Paragraph II of the consent order be modified to eliminate the following language:

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C. The accounting system shall provide that:

7. Dealers are not to obtain waivers of surplus or redemption rights from repurchase financing customers.

*It is further ordered,* That Paragraph II of the consent order be modified to add the following language:

C. The accounting system shall provide that:

7. Dealers are not to take any action to obtain or to attempt to obtain or bring about a waiver of a customer's right to redeem, except in the precise manner and circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless the dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the dealer shall not represent that by proposing the waiver, it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given. No customer's waiver of rights or failure to object to any secured party's proposal to retain the repossessed vehicle, unless procured in exact conformity with this subparagraph, shall limit the provisions of the accounting system relating to accounting for and paying any surplus.



## Modifying Order

IN THE MATTER OF  
**HASTINGS MANUFACTURING COMPANY**

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC.  
 2(A) OF THE CLAYTON ACT

*Docket 4437. Decision, Dec. 9, 1944—Modifying Order, Feb. 23, 1980*

This order modifies an order issued on December 9, 1944, 10 FR 773, 39 F.T.C. 498, by deleting the phrase "or all such products of any competitor of respondents" from the second paragraph of the original order which barred respondent from offering stock lifts as an inducement to dealers to carry its products exclusively or in place of a competing line stocked by the dealer. The revised order prohibits only stock lifts to induce exclusive dealing arrangements.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Following extensive briefing by respondent Hastings Manufacturing Company and the Commission's Bureau of Competition, the Commission on December 20, 1979, issued an order to show cause why the cease and desist order issued in this proceeding in 1944<sup>1</sup> should not be modified. The Commission stated that stock lifting, when not employed to induce exclusive dealing arrangements, ordinarily is an unobjectionable form of competition by suppliers for dealers.<sup>2</sup> Little different from a price discount, stock lifting is likely to promote price competition and, if the market is otherwise competitive, ultimately benefit the consumer. The Commission concluded that it appeared to be in the public interest to modify the 1944 order so that it would no longer prohibit stock lifting for purposes, or with effects, other than to induce exclusive dealing. The show cause order invited interested parties to comment on the proposed change.

The Commission having considered the comments submitted by several members of the public,<sup>3</sup>

Now, therefore, *it is hereby ordered*, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) and Rule 3.72(b) of the Commission's Rules of Practice (16 CFR 3.72(b)), That the 1944 cease and desist order be modified in part as follows (deleted language is hyphenated out):

*It is ordered*, That respondent Hastings Manufacturing Co., its officers, representatives, agents, and employees, directly or through

<sup>1</sup> Hastings Mfg. Co., 39 F.T.C. 498, 509 (1944).

<sup>2</sup> The Commission noted that there are exceptions. For example, stock lifting to encourage dealers to carry the stock lifter's goods in place of one of several existing lines might violate Section 3 of the Clayton Act (15 U.S.C. 14) if the practice's effect might be to substantially lessen competition. In addition, if the stock lifter possessed monopoly power and its stock lifting functioned as a form of predatory pricing, the practice might constitute monopolization.

<sup>3</sup> Neither the respondent nor the Bureau of Competition filed comments in response to the order to show cause.

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any corporate or other device, in connection with the offering for sale, sale, and distribution of piston rings and other automotive replacement parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing, directly or indirectly any of the following acts or things (when done as an inducement to the distributor of automotive parts concerned to discontinue handling all products competitive with respondent's and thereafter handle respondent's products in lieu thereof, or when done upon any express or implied condition, agreement, or understanding that such distributor will discontinue handling all products competitive with those of respondent, ~~or all such products of any competitor of respondent~~, and will handle respondent's products in lieu thereof):

1. Purchasing from any distributor or prospective distributor of respondent's piston rings or other replacement parts his stock, or stocks recalled by him from his customers, of the products of another manufacturer which are competitive with respondent's products.
2. Making any loan to a distributor or prospective distributor of respondent's piston rings or other replacement parts.
3. Guaranteeing to distributors or prospective distributors of respondent's piston rings or other replacement parts increased gross profits from the handling of respondent's products as compared with gross profits previously obtained from the handling of products competitive with those of respondent.

## Modifying Order

IN THE MATTER OF

ARTHUR MURRAY, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 7845. Decision, July 26, 1960—Modifying Order, March 10, 1980*

This order modifies an order issued on July 26, 1960, 25 FR 9673, 57 F.T.C. 306, by inserting a Roman numeral one before the preamble of the original order; vacating the *It is further ordered* paragraph therein; and adding new Parts II, III, IV and V. The modified order strengthens the 1960 order by giving consumers the right to unilaterally cancel contracts with the company and receive prescribed refunds within 30 days of cancellation. Respondent is additionally required to direct franchisees and sub-franchisees to comply with the terms of the order, institute a program of continuing surveillance designed to reveal non-conformers, and terminate dealings with such parties.

## ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on September 18, 1979, issued its order to show cause why this proceeding should not be reopened and its order of July 27, 1960 (hereafter sometimes referred to as "the Commission Order of 1960"), modified.

Respondents having consented to the reopening of this proceeding and the modification of the Commission Order of 1960, as set forth in the show cause order and the Commission having considered the comments filed by interested persons,

Now, therefore, *it is hereby ordered*, That the Commission Order of 1960 be, and it hereby is, modified by inserting a Roman numeral one, I, before the preamble of the Commission Order of 1960, by vacating the *It is further ordered* paragraph therein, and by adding new Parts II, III, IV, and V so that the Modified Order will read as follows:

## ORDER

## I.

*It is ordered*, That respondent Arthur Murray, Inc., a corporation, and its officers, and respondents Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Representing, directly or by implication, by means of radio or television broadcasts, newspaper advertisements, contracts, telephone quizzes, crossword, dizzy dance or zodiac puzzles, "Lucky Buck" contests, or any certificates relating thereto, or any other means, that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value, will be furnished free of charge, at a reduced price, or for any price, unless the period or periods of *bona fide* dancing instruction or other service or thing of value is in fact furnished as represented.
2. Refusing to honor the terms and provisions of any certificate, award or offer.
3. Using (a) by telephone any quiz, puzzle, contest or other device which purports to involve, or is represented as involving, skill, competition or special selection; (b) by other means any promotion which purports to be a *bona fide* quiz, puzzle, contest or other device involving skill, competition or special selection is not involved; or (c) any *bona fide* quiz, puzzle, contest or similar device when a purpose of such promotion is to obtain leads to prospective customers and such purpose is not fully and conspicuously disclosed in the announcement or description of such promotion.
4. Using in any single day "relay salesmanship", that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction.
5. Using "analyses," "tests," "studio competitions," "dance derivatives," or any other artifices purportedly designed to evaluate dancing ability, progress or proficiency when said artifices are not so designed or so used but are in fact to induce the purchase of dancing instruction.
6. Requesting pupils or prospective pupils to sign uncompleted contracts or agreements; evading or refusing to answer inquiries concerning amount due or payable on proposed or completed contracts or agreements; or misrepresenting to pupils or prospective pupils what is or will be due or payable.
7. Falsely representing to or assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency.
8. Contracting with a pupil or prospective pupil for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such pupil or prospective pupil to sales effort toward the purchase of additional lessons, unless (a) any contract for additional lessons is subject to cancellation by such pupil or prospective pupil, with or without cause, at any time up to and including one week after the completion of the units of dancing

instruction previously contracted for, without cost or obligation, except that a charge may be made for not in excess of two additional lessons furnished during such week and (b) all of such units previously contracted for shall be used or completed prior to the commencement of the additional lessons.

9. Using any technique or practice similar to those set out in paragraphs 4 through 8 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dance instruction.

## II.

For purposes of this part the following definitions shall be applicable:

“Total contract price” shall mean the total cash price paid or to be paid by the pupil or prospective pupil for the dance instruction or dance instruction services which are the subject of the contract or written agreement.

“Notice of cancellation” shall be deemed to have been provided by a pupil or prospective pupil by mailing or delivering written notification to cancel the contract or written agreement or by failing to attend instructional facilities for a period of five consecutive appointment days on which classes or the provision of services which are the subject of the contract or written agreement were prearranged with the pupil or prospective pupil.

“Reasonable and fair service fee” shall mean no more than 10% of the total contract price for contracts of \$1,000 and under. For contracts over \$1,000, “reasonable and fair service fee” shall mean no more than \$100 plus an amount equal to 5% of the total contract price over \$1,000 (not to exceed \$250 in total).

*It is further ordered,* That respondent Arthur Murray, Inc., a corporation, and its officers, and respondent’s agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dance instruction or dance instruction services which are the subject of a contract or written agreement, do forthwith cease and desist from:

1. Entering into any contract or written agreement for dance instruction or dance instruction services which are the subject of the contract or written agreement unless it clearly and conspicuously discloses in the exact language below that:

This agreement is subject to cancellation at any time during the term of the agreement upon notification by the student. If this agreement is cancelled within three business days, the studio will refund all payments made under the agreement. After three

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business days, the studio will only charge you for the dance instruction and dance instruction services actually furnished under the agreement plus a reasonable and fair service fee.

2. Failing to refund to a pupil or prospective pupil who cancels any contract or written agreement within three business days from the date on which the contract or written agreement was executed, all payments made by the pupil or prospective pupil. Such refunds shall be provided, and any evidence of indebtedness cancelled and returned, within 30 days after receiving notice of cancellation.

3. Receiving, demanding, or retaining more than a pro rata portion of the total contract price plus a reasonable and fair service fee where a pupil or prospective pupil cancels any contract or written agreement after three business days from the date on which the contract or written agreement was executed and within the term of the said contract or written agreement. Seller must, within thirty (30) days of notice of cancellation, provide any refund payment due to the pupil or prospective pupil or must cancel that portion or the pupil's or prospective pupil's indebtedness that exceeds the amount due. The pro rata portion shall be calculated in the following manner:

(a) For the time period preceding notice of cancellation, there must be calculated the number of hours or lessons of dance instruction or dance instruction services received or attended by the pupil pursuant to the contract or written agreement.

(b) This number must be divided by the total number of hours or lessons of dance instruction or dance instruction services which are the subject of the contract or written agreement.

(c) The resulting number shall be multiplied by the total contract price.

(d) For contracts combining a course of dance instruction with dance instruction services, separate prices for the dance instruction and the dance instruction service portions must be designated and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the dance instruction portion and the dance instruction service portion.

4. Misrepresenting in any manner to any pupil or prospective pupil any of the provisions of this order.

III.

*It is further ordered*, That nothing contained in the Modified Order cease and desist shall be construed to relieve respondent from complying with any provision of any federal, state, or local law, rule, regulation, or order which affords greater protection to pupils or

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prospective pupils than the comparable provision of the Commission's order or to waive any legal rights the pupil or prospective pupil may have under the various jurisdictions.

## IV.

*It is further ordered, That:*

1. Respondent corporation deliver a copy of this order to each of its present and future franchisees or sub-franchisees, with directions that such persons promulgate and enforce same.
2. Respondent obtain from each person described in sub-paragraph 1 above a signed statement setting forth his/her intention to conform his/her business practices to the requirements of this order; if respondent is unable to obtain such signed statements, respondent shall notify the Federal Trade Commission of the name of the franchisee or sub-franchisee which will not sign such a statement and report the reason therefore to the Federal Trade Commission.
3. Respondent institute a program of continuing surveillance adequate to reveal whether the business operation of each person described in subparagraph 1 above conforms to the requirements of this order; and
4. Respondent discontinue dealing with or terminate the use or engagement of any person described in subparagraph 1 above who continues, after notice, to engage in a continuous course of conduct involving acts or practices prohibited by this order as revealed by the aforesaid program of surveillance. Respondent is permitted to effect such termination in accordance with applicable state laws in those states which have statutes governing franchise termination.

## V.

*It is further ordered, That:*

1. Respondent corporation forthwith distribute a copy of this order to each of its operating divisions.
2. Respondent corporation 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.
3. Respondent corporation, within one hundred fifty (150) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Interlocutory Order

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IN THE MATTER OF  
GENERAL FOODS CORPORATION

*Docket 9085. Interlocutory Order, March 10, 1980*

Order denying respondent's motion for review of ALJ's order of Sept. 6, 1979 removing certain exhibits from *in camera* status.

## ORDER

General Foods Corporation applies for review of the administrative law judge's order of September 6, 1979, removing certain exhibits from *in camera* status. Pursuant to Commission Rule Section 3.23(b), the law judge certified this appeal to the Commission.

General Foods contends that certain exhibits which disclose cost and profitability information for 1971-1977 for brands of General Foods coffee, a cost accounting manual and an accounting and financial manual used by General Foods constitute trade secrets or confidential commercial information, and that their disclosure is prohibited by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f). Even if they are not trade secrets within the meaning of Section 6(f), General Foods contends that the documents contain confidential information which 18 U.S.C. 1905 forbids the Commission from disclosing unless the disclosure is authorized by law. General Foods argues that the Commission has disclaimed Section 6(f) as a source of authority for disclosures in adjudicative proceedings, citing our opinions in *Bristol-Myers Company*, 90 F.T.C. 455 (1977), and *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961). Finally, General Foods claims that even if disclosure is not prohibited by Section 6(f) of the FTC Act or 18 U.S.C. 1905, application of the criteria in *Bristol-Myers* and *Hood* warrants *in camera* treatment.

We hold that the exhibits at issue do not contain "trade secrets" within the meaning of Section 6(f). As we have recently stated, the legislative history and purposes of the FTC Act demonstrate that the phrase "trade secrets" is primarily limited to secret formulas, processes, and other secret technical information. See *Statement Concerning Nonpublic Disclosure to State Attorneys General of Information Obtained by the Commission*, in *Interco, Inc.*, D. C-2929, at 12-20 (November 9, 1979); *Hood, supra*, 58 F.T.C. at 1188-89. See also *Interco, Inc. v. FTC*, Civ. Action No. 78-2486 (D.D.C. December 21, 1979), where the court accepted the Commission's interpretation of "trade secrets" within the meaning of Section 6(f).<sup>1</sup>

<sup>1</sup> In any event, we reiterate here that the prohibition on disclosure of "trade secrets" contained in Section 6(f) does not apply to adjudicative proceedings. *Bristol-Myers*, 90 F.T.C. at 456 n. 2; *Hood*, 58 F.T.C. at 1185-86 and n. 1.



It is also doubtful that this information falls within 18 U.S.C. 1905. Both the House Committee on Government Operations and the Justice Department have stated that Section 1905 should not be construed more broadly than the three relatively narrow statutes that were consolidated into Section 1905. Accordingly, they have stated that Section 1905 applies only to narrow categories consisting of tax information, trade secrets, and confidential information acquired for statistical purposes. See H.R. Rep. No. 95-1382, 95th Cong., 2d Sess. 58 (1978); Supplemental brief for defendants-appellees at 1-16, filed in *Chrysler Corp. v. Brown*, No. 76-1907 (3d Cir.) on July 17, 1979. Thus, these exhibits do not appear to come within Section 1905.

We need not reach a definitive resolution of the Section 1905 question, however, since Section 1905 only prohibits disclosure of information "to any extent not authorized by law." *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979). The FTC Act, 15 U.S.C. 41, *et seq.*, provides inherent authority for disclosure of information in the course of adjudicative proceedings. See *E. Griffiths Hughes, Inc. v. FTC*, 63 F.2d 362 (D.C. Cir. 1963). For example, Section 5(b) of the Act allows interested parties to intervene and requires the Commission to report its findings in adjudicative proceedings. Because disclosure of evidence is necessary to carry out our duties under Section 5 of the FTC Act, such disclosures are authorized for purposes of 18 U.S.C. 1905.

General Foods' alternative claim is that these exhibits warrant *in camera* treatment. The administrative law judges have broad discretion in determining what information should be placed *in camera* and we do not ordinarily disturb their determinations "except on the basis of a showing of abuse." *Eaton, Yale & Towne*, 79 F.T.C. 998, 1001 (1971); *Hood*, 58 F.T.C. at 1185.

The ALJ denied *in camera* treatment to a number of charts prepared by an expert witness and to General Foods documents showing profits, breakdowns of various costs, sales, and assets relating to several brands of General Foods coffee for the years 1971-1977 (data are provided through March 1977). General Foods contends that these data were compiled at great expense and that they would give competitors significant insights into General Foods' strengths and weaknesses. However, as the law judge correctly noted, we place a greater burden on a respondent when the information is old; here, most of the information is more than three years old. The Commission has usually denied *in camera* treatment for data of that vintage.<sup>2</sup> General Foods does not make a convincing showing that such data

<sup>2</sup> See, e.g., *Crown Cork & Seal Company*, 71 F.T.C. 1714, 1715 (1967) (two-and-a-half to six-year-old sales data denied *in camera* treatment); *Columbia Broadcasting System, Inc.*, 72 F.T.C. 27, 177-180, 334-35 (1967) (*in camera* treatment for sales data, especially five-year-old data, criticized by Commission); *Reuben H. Donnelley Corporation*, D. 9079 (order of Oct. 25, 1977) (*in camera* treatment of relevant two-year-old revenue data denied); see also *United*

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would provide significant insight into its strengths and weaknesses. Indeed, General Foods consented to placement on the record of similar data for 1971 through 1973.

With regard to detailed profit and expense information for 1976-1977, there is evidence that estimates of these figures may be available to competitors from outside sources, and that General Foods has access to similar data about its competitors.<sup>3</sup> It is possible that General Foods might have made a sufficient showing to warrant *in camera* treatment for a temporary period<sup>4</sup> had it provided more detailed information concerning the following factors, *inter alia*:

(1) Whether General Foods knows what estimates of its sales, profits, and costs are available and generally how accurate those estimates are.

(2) What degree of detail may be obtained from public sources, such as General Foods' financial statements<sup>5</sup> or estimates based on known frequency of and rates for public media advertising.

(3) How many employees have how much information about current financial data, and whether such employees have recently left General Foods' employ.<sup>6</sup>

With regard to General Foods' financial and accounting manuals, respondent's showing is rather conclusory. Certainly if these manuals represented a significant work product, compiled at great expense, disclosure of which would give other companies the benefit of General Foods' labors, *in camera* treatment might be warranted. *Bristol-Myers*, 90 F.T.C. at 456. We are unable to discern from the evidence before us whether similar procedures are likely to be employed by other companies or, if there are significant differences, whether these procedures are so uniquely adapted to General Foods' operations that they would be of little use to other companies. *Id.* Thus, we cannot disagree with the ALJ's determination on this issue.

*States v. International Business Machines Corp.*, 67 F.R.D. 40, 47-49 (S.D.N.Y., 1975) (*in camera* treatment denied for three-year-old revenue, sales and manufacturing data). General Foods' assertion of confidentiality based on complaint counsel's belief that the data are relevant is frivolous.

<sup>3</sup> General Foods argues that the fact that complaint counsel sought information directly from it rather than relying on generally available information demonstrates that such information is not useful to competitors. We do not believe, however, that General Foods would disagree that sound administrative practice may require that a Commission order be based when possible on information that is more accurate than estimates upon which a competitor might reasonably rely in conducting its business.

<sup>4</sup> Where serious competitive injury may result from disclosure, or even where the issue is a close call, a useful procedure that may be employed is to grant *in camera* treatment for a period of years unless earlier public disclosure is deemed relevant in an opinion on the merits. See, e.g. *Brunswick Corp.* (Dkt. 9028, order of Jan. 12, 1977). The Commission also noted the availability of this procedure in *Bristol-Myers*, *supra*, at 457.

<sup>5</sup> We note that many corporations are now obliged to break down their financial information by broad product category rather than publishing only data for the whole company. See Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 14, Financial Reporting for Segments of a Business Enterprise* (Dec. 1976).

<sup>6</sup> An administrative law judge may provide that such showings may be made *in camera* if the discussions themselves would be tantamount to revealing the allegedly injurious information at issue.

We note that there may be some uncertainty about our statement in *Bristol-Myers* concerning the elements of the "clearly defined, serious injury" that must be shown in order to warrant *in camera* treatment, and it seems appropriate to take this opportunity to clarify the *Bristol-Myers* test. We reaffirm here that the showing required to warrant *in camera* protection is the *Hood* standard, i.e., that public disclosure of the information in question will result in "clearly defined, serious injury." 58 F.T.C. at 1188. In *Bristol-Myers* we stated that such serious injury requires that the information in question is secret and material to the applicant's business and would be less likely to be produced if it were known that the information had to be publicly disclosed. 90 F.T.C. at 456. It is this latter, third prong of the *Bristol-Myers* standard that, we believe, raises troublesome problems of application.

In *Bristol-Myers*, the purpose of this third factor was to effect a balance between the need for a public record and the interest of businesses in avoiding disclosure of sensitive information. *Id.* It seems, however, that this balance can be struck without attempting to ascertain whether businesses will be less likely to produce and retain the kind of documents for which *in camera* treatment is sought if the contents of such documents are disclosed to competitors. Since many records that may be of value to competitors are essential to a firm's operations, it is unlikely that this consideration will adequately serve to differentiate which information should be granted *in camera* protection and which should not be so treated. In our view, if disclosure of confidential business information is likely to cause serious competitive injury, the principal countervailing consideration weighing in favor of disclosure should be the importance of the information in explaining the rationale of our decisions. It is unnecessary and not particularly helpful to require as an additional consideration an assessment of the likelihood that businesses will continue to produce that type of information even if disclosed. For these reasons, we hereby modify the *Bristol-Myers* standard by eliminating the third criterion of the test set forth in that decision.

In all other respects, we reaffirm the *Bristol-Myers* order. Thus, in determining future requests for *in camera* treatment, ALJs should require applicants to make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury. *Bristol-Myers* lists several particular factors that should be weighed by ALJs in determining whether the required showings of secrecy and materiality have been met. If there is doubt as to whether particular kinds of business records deserve *in camera* treatment, the ALJs may also find it useful to refer to recent court decisions dealing with the

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scope and subject matter of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) ("FOIA"). *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Categories of business records that courts have judged to be exempt from mandatory disclosure under the FOIA may be suited to *in camera* treatment, although a final determination must, of course, be made on the adequacy of the applicant's showings in light of the "serious injury" standard set forth in *Bristol-Myers* and *Hood* where we noted that confidentiality is not itself sufficient to warrant *in camera* treatment. 58 F.T.C. at 1189. Conversely, court decisions holding that specific types of business records are *not* exempt from mandatory disclosure should help ALJ's to quickly identify records that are presumptively inappropriate for *in camera* protection.<sup>7</sup>

We reiterate that the *Hood/Bristol-Myers* standard best serves the overall public interest because it strikes the balance between the need for a public understanding of the Commission's adjudicative actions and the interest of business in avoiding competitive injury from public disclosure of information.

Accordingly, General Foods' motion is denied. This order is without prejudice to the administrative law judge's discretion to revise his order should General Foods make a more detailed showing or to consider the effect of our clarification of *Bristol-Myers*.

<sup>7</sup> Recognizing that in some instances the ALJ or Commission cannot know that a certain piece of information may be critical to the public understanding of agency action until the Initial Decision or the Opinion of the Commission is issued, the Commission and the ALJs retain the power to reassess prior *in camera* rulings at the time of publication of decisions.

IN THE MATTER OF  
SHELL OIL COMPANY

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

*Docket C-3012. Complaint, March 12, 1980—Decision, March 12, 1980*

This consent order requires, among other things, a Houston, Texas oil company to cease failing to terminate the liability of a credit card holder for any unauthorized use of the card, after being properly notified by the card holder that third-party use was no longer authorized.

*Appearances*

For the Commission: *Robert C. Cheek.*

For the respondent: *A.M. Minotti, Houston, Texas.*

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 Shell Oil Company, a corporation, hereinafter sometimes 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:

DEFINITIONS: For purposes of this complaint, the terms "card issuer," "cardholder," "consumer credit," "credit," "credit card," "creditor," "customer," and "unauthorized use" shall be defined as provided in Regulation Z, 12 CFR 226, the implementing regulation of the Truth In Lending Act, 15 U.S.C. 1601, *et seq.*, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Shell Plaza in the City of Houston, State of Texas.

PAR. 2. Respondent is now and for sometime has been engaged in the offering for sale and sale of gasoline and automotive products and services to the public at retail and to dealers.

PAR. 3. In the ordinary course and conduct of its business, respondent

regularly extends or arranges for the extension of consumer credit and is a "creditor" as defined in Regulation Z.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of its business, has issued credit cards to cardholders for their use both at service stations operated by respondent's employees and at certain service stations operated by independent businessmen that extend or arrange consumer credit for respondent. Such credit cards enable cardholders to purchase from such service stations automotive goods and services, such as gasoline, tires and automobile maintenance services, and to defer payment for such goods and services.

PAR. 5. Such payments are deferred by the cardholders' signing charge tickets specifying the amount of charges for the goods or services purchased. At a later date, respondent sends periodic billing statements to its cardholders listing the total charges received by respondent and processed for that billing period, after which time the cardholders are required to make payment for such charges.

PAR. 6. In various instances, certain cardholders authorize other persons (hereinafter referred to as "third persons") to use their credit cards to purchase goods and services. In such instances, respondent holds the cardholders liable for such authorized use even though the cardholders do not sign the charge tickets and even though the cardholders receive no benefit from such use.

PAR. 7. In certain instances, cardholders notified respondent that such previously authorized use had been revoked. In certain instances, respondent informed such cardholders that they were liable for such charges incurred by the third person until the credit cards used by the third persons were returned to respondent, and respondent requested payments from the cardholders for such third-person charges after notification by the cardholders to respondent of the revocation.

PAR. 8. By and through the acts and practices alleged above, respondent has failed to limit the liability of a cardholder for unauthorized use of each credit card issued in accordance with the requirements of §226.13(b)(2) of Regulation Z, and such failure constitutes a violation of §226.13(b)(2) of Regulation Z.

PAR. 9. Pursuant to §103(s) of the Truth In Lending Act, respondent's aforesaid failure to comply with Regulation Z constitutes a violation of that Act, and pursuant to §108 thereof respondent has 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 respondent named in the caption

hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Shell Plaza, in the City of Houston, State of Texas.

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

#### ORDER

*It is ordered,* The respondent Shell Oil Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any offering to arrange, arrangement or extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 CFR 226) of the Truth In Lending Act (15 U.S.C. 1601, *et seq.*, as amended) do forthwith cease and desist from:

1. Failing to limit the liability of a cardholder for use of a credit

card by a third person, in those cases where such third person has been given authorization by the cardholder to use such credit card, to the amount of money, property, labor, or services obtained by use prior to notification to respondent, in accordance with Section 226.13(e) of Regulation Z, by the cardholder or the cardholder's agent that such use is no longer authorized, as required by Section 226.13(b)(2) of Regulation Z.

2. Informing a cardholder that respondent considers the cardholder liable for use of a credit card by a third person which occurs after the cardholder notifies respondent that such use is no longer authorized.

*Provided, however,* that it shall be a defense to any action brought hereunder for respondent to affirmatively show by a preponderance of the evidence that the alleged violation was due to a circumstance in which:

a) it attempts to hold a cardholder liable for use of its credit card when the cardholder has received the benefit from such use, or

b) it attempts to hold a cardholder liable for use of its credit card when the cardholder has engaged in fraudulent use of its credit card.

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

*It is further ordered,* That respondent deliver a copy of this order to cease and desist to all present and future supervisory personnel of respondent who are engaged in the furnishing of credit card information or in the billing or collecting of credit card accounts and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

*It is further ordered,* That respondent herein shall, within sixty (60) days and again within one (1) year after service of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.



IN THE MATTER OF  
HAIR EXTENSION OF BEVERLY HILLS, INC., ET AL.

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

*Docket C-3013. Complaint, March 13, 1980—Decision, March 13, 1980*

This consent order requires, among other things, two California firms and two individuals engaged in the sale of hair replacement services to cease soliciting, selling or performing hair implants; and/or misrepresenting, in advertising or otherwise, the safety or effectiveness of the hair implant process in the treatment of baldness. Should respondents engage in any future hair replacement business, they must expend at least \$8,000 on corrective advertising warning consumers that "Hair Implants Are Unsafe." The order also requires that the Commission notify past hair implant customers that the process is unsafe and that they should seek prompt medical attention.

*Appearances*

For the Commission: *George E. Schulman and Anne B. Roberts.*

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 Hair Extension of Beverly Hills, Inc., a corporation, also trading and doing business as Hair TransCenter; Hair Extension, Inc., a corporation, also trading and doing business as Hair TransCenter; Lee Marlow, individually and as an officer of said corporations; and Ann Marlow, individually and as an officer of said corporations, 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:

PAR. 1. Respondent Hair Extension of Beverly Hills, Inc., also trading and doing business as Hair TransCenter, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its principal office and place of business is at 8383 Wilshire Boulevard, Beverly Hills, California.

Respondent Hair Extension, Inc., also trading and doing business as Hair TransCenter, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its

principal office and place of business is at 16152 Beach Boulevard, Huntington Beach, California.

Respondent Lee Marlow is an officer of each of the corporate respondents named herein. He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His address is 16152 Beach Boulevard, Huntington Beach, California.

Respondent Ann Marlow is an officer of each of the corporate respondents named herein. She formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. Her address is 16152 Beach Boulevard, Huntington Beach, California. She is the wife of Lee Marlow.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and sale to the general public of hair replacement products, processes, operations and surgical procedures, for the treatment of baldness, thinning hair or loss of hair, or for the replacement of lost hair, including a process or operation which is known as a "hair implant" or "dermis inversion" process ("the Hair Implant Process").

For the purpose of this complaint, the Hair Implant Process is defined as a hair replacement product, process, operation or surgical procedure which involves the insertion or placement of (1) synthetic fibers or filaments which simulate hair or (2) non-living human hairs, into or under the scalp of the patient.

#### COUNT I

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

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

PAR. 4. In the course and conduct of their said businesses, respondents are now making, and have made representations, orally and in writing, directly and indirectly, in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, the purchase of the Hair Implant Process in commerce.

PAR. 5. Respondents represent, orally and in writing, directly and

indirectly, that the Hair Implant Process in general is safe and effective, and that the Hair Implant Process as performed by respondents or by their agents, representatives or employees is safe and effective for providing the purchaser with a natural looking head of hair, or for treating baldness, thinning hair or loss of hair, or for replacing lost hair, and will not result in medical complications or infections.

PAR. 6. In truth and in fact, the Hair Implant Process is not generally recognized as safe and effective, and is not performed in a safe and effective manner by respondents. The Hair Implant Process, both in general and as performed by respondents, does not result in a natural looking head of hair, and is not an effective method of treatment for baldness, thinning hair or loss of hair, or for the replacement of lost hair. The Hair Implant Process, both in general and as performed by respondents, results in medical complications and infections which may endanger the health of the purchaser.

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

PAR. 7. There existed, at all times relevant hereto, no reasonable basis for making the representations set forth in Paragraph Five herein.

Therefore, the making of the representations as set forth in Paragraph Five herein, without a reasonable basis constituted and now constitutes unfair or deceptive acts or practices.

PAR. 8. Respondents fail to disclose, either orally or in writing, directly or indirectly, that the Hair Implant Process, in general and as performed by respondents, is not a safe or effective method of treatment for baldness, thinning hair or loss of hair, or for the replacement of lost hair, and presents a high risk of infection or other medical complications which may endanger the health of the purchaser.

PAR. 9. In truth and in fact, the Hair Implant Process, both in general and as performed by respondents, is not generally recognized as a safe or effective method of treatment for baldness, thinning hair or loss of hair, or for the replacement of lost hair and presents a high risk of infection or other medical complications which may endanger the health of the purchaser.

Therefore, the failure to disclose that the Hair Implant Process is not a safe or effective method of treatment for baldness, thinning hair or loss of hair, or for the replacement of lost hair, and the failure to disclose that it presents a high risk of infection or other medical complications which may endanger the health of the purchaser, constitutes unfair or deceptive acts or practices.

## COUNT II

Alleging violation of Section 12 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two are incorporated by reference herein as if fully set forth verbatim.

PAR. 10. In the course and conduct of their said businesses, respondents have disseminated and caused the dissemination of certain advertisements concerning the Hair Implant Process through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in magazines and newspapers with national circulations, and advertisements in the form of a brochure entitled "Hair TransCenter" which was, and is, sent through the United States mail, for the purpose of inducing, and which is likely to induce, the purchase of respondents' Hair Implant Process, and have disseminated and caused the dissemination of advertisements concerning said Hair Implant Process by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said Hair Implant Process in commerce.

PAR. 11. Respondents represent directly and indirectly, in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, that the Hair Implant Process is a safe and effective method for providing the patient with a natural looking head of hair, or for treating baldness, thinning hair or loss of hair, or for replacing lost hair, and that the Hair Implant Process is approved by doctors, and will not result in medical complications or cause infections.

PAR. 12. In truth and in fact, the Hair Implant Process, both in general and as performed by respondents, is not a safe or effective method for the treatment of baldness, thinning hair or loss of hair, or for the replacement of lost hair. The Hair Implant Process presents a high risk of severe infections or other medical complications which may endanger the health of the purchaser. The Hair Implant Process is not an effective method of treatment for baldness, thinning hair or loss of hair, or for the replacement of lost hair, because the implanted hairs fall out or break off shortly after inserted. In addition, due to the Hair Implant Process, frequently a patient loses his own hair. The Hair Implant Process is not approved by doctors relying on competent and reliable scientific evidence, and in fact, generally is recognized by doctors as an unsafe and ineffective method of treatment for baldness, thinning hair or loss of hair, or for the replacement of lost hair.

Therefore, the advertisements referred to in Paragraphs Ten and

Eleven, were and are misleading in material respects and constituted, and now constitute, false advertisements.

PAR. 13. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as the products and services sold by respondents.

PAR. 14. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 15. The 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 or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### DECISION AND ORDER

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

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

The respondents agreed to provide to the Commission the names and

addresses of their customers who underwent or paid money to undergo the Hair Implant Process and that the Commission may notify each said customer regarding the risks and problems involved in the Hair Implant Process and the fact that this order has been accepted by the Commission, such notice being substantially similar to the following letter:

Dear \_\_\_\_\_

Hair Extension told us that you came to their office for hair implants. The FTC has reason to believe that the hair implant process is not safe or effective at the present time. There is no medically safe way to do hair implants. Therefore, many of their customers have developed scalp infections.

Hair Extension has promised the Federal Trade Commission that they will not do any more hair implants until the Food and Drug Administration approves a safe and effective procedure that protects future customers. However, we thought we should contact former customers to let them know the problems they could have with their implants.

Some people get infections right away. For others, an infection may develop months later. A few may never have a problem.

Many people report severe symptoms—pain, noticeable scarring, hairs breaking off, scalp soreness, redness and swelling. However, others may have only a minor problem. A problem may not be too noticeable now but could develop into a more serious problem if not treated.

Therefore, for your own safety, you may want to see a doctor for an examination of your scalp and implants. If you do have any of these symptoms, you should go see a doctor immediately. The agreement which Hair Extension signed does not provide refunds or money for your doctor bills. However, you might want to contact an attorney to find out whether Hair Extension may be liable for any costs or injury you have suffered.

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 sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Proposed respondent Hair Extension of Beverly Hills, Inc., also trading and doing business as Hair TransCenter, is a corporation organized, existing and doing business under and by virtue of the laws

of the State of California. Its principal office and place of business is at 8383 Wilshire Boulevard, Beverly Hills, California.

Proposed respondent Hair Extension, Inc., also trading and doing business as Hair TransCenter, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its principal office and place of business is at 16152 Beach Boulevard, Huntington Beach, California.

Proposed respondents Lee Marlow and Ann Marlow are officers, directors and stockholders of said corporations. They formulate, direct and control the policies, acts and practices of said corporations and their address is 16152 Beach Boulevard, Huntington Beach, California. They are husband and wife.

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 purpose of this order, the following definition shall apply:

The "Hair Implant Process" refers to any hair replacement product, process, operation or surgical procedure which involves the insertion or placement of (1) synthetic fibers or filaments which simulate hair or (2) non-living human hairs, into or under the scalp of a patient.

#### I

*It is ordered*, That Hair Extension of Beverly Hills, Inc., Hair Extension, Inc., corporations, and Lee Marlow and Ann Marlow, individuals, their successors and assigns, their officers, agents, representatives, employees and persons under respondents' control, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale and sale of the Hair Implant Process, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Disseminating, or causing or permitting the dissemination of any advertisement or other representation or claim, express or implied, that the Hair Implant Process is safe or effective in the treatment of baldness, thinning hair or loss of hair, or for the replacement of lost hair.

2. Soliciting, recommending, promoting, offering for sale, selling, arranging for or performing the Hair Implant Process.

*Provided, however*, that nothing shall prevent respondents from filing with the Commission a petition to modify this order, *provided*

that respondents are able to demonstrate to the satisfaction of the Commission by competent and reliable scientific tests that:

1. The Hair Implant Process is safe and effective (and affirmative approval by the Food and Drug Administration that the process is safe and effective shall be deemed sufficient proof of compliance with this provision), and

2. The Hair Implant Process will be performed by respondents (or by persons recommended by or under the control of respondents) in a safe and effective manner (and affirmative approval by the Food and Drug Administration that named respondents will perform the Hair Implant Process in a safe and effective manner shall be deemed sufficient proof of compliance with this provision.)

*Provided, however,* that if the Commission determines, upon proper application of respondents, that the Hair Implant Process is safe and effective and that the Hair Implant Process will be performed by respondents (or by persons recommended by or under the control of respondents) in a safe and effective manner, and such determination shall be based upon respondents' proof of compliance with the provisions set forth in the preceding paragraph, and if the Commission determines that further relief is necessary in the public interest, the Commission may require respondents to provide further relief. Said further relief may include, but is not limited to: (1) affirmative disclosures that there is a high probability of discomfort and pain and a high risk of infection, skin disease and scarring; that continuing special care is necessary to minimize the probabilities and risks referred to herein; and that such care may involve additional costs for medications and assistance; (2) a cooling-off period, following execution of contracts for services; and (3) a recommended consultation with an independent duly-licensed physician before undergoing the Hair Implant Process.

## II

*It is further ordered,* That if Hair Extension of Beverly Hills, Inc., Hair Extension, Inc., corporations and Lee Marlow and Ann Marlow, individuals, their successors and assigns, their officers, agents, representatives, employees and persons under respondents' control, directly or through any corporation, subsidiary, division or other device, are engaged in or affiliated with any business which offers methods of treating baldness, loss of hair or thinning hair, or the replacement of lost hair, and if such business advertises in any media during a one year period commencing thirty (30) days after this order becomes final, then respondents shall disclose in such advertising during that one year



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period, clearly and conspicuously, in type no smaller than the smallest type otherwise in the advertising or 10 point type, whichever is larger, the following notice:

## WARNING

Hair implants, using artificial hair or human hair, are medically unsafe. We do not use this procedure.

## III

*It is further ordered,* That if Hair Extension of Beverly Hills, Inc., Hair Extension, Inc., corporations, and Lee Marlow and Ann Marlow, individuals, their successors and assigns, their officers, agents, representatives, employees and persons under respondents' control, directly or through any corporation, subsidiary, division or other device, are engaged in any business which offers methods of treating baldness, loss of hair or thinning hair, or the replacement of lost hair, respondents shall place the following advertisement in the *Los Angeles Times*, the *Santa Ana Register*, the *Los Angeles Herald Examiner* and *Los Angeles Magazine*.

## HAIR IMPLANTS ARE UNSAFE

Hair implants, the inserting of synthetic hairs or human hairs into the scalp, are medically unsafe.

Many hair implant patients have developed scalp infections, noticeable scarring and have lost the implanted hair.

The *Federal Trade Commission* advises anyone considering a hair implant—or any other “cure” for baldness—to see a doctor. If you had a hair implant and have developed any problems, you should go see a doctor immediately.

This notice was prepared by the FTC and placed at the expense of Hair Extension, Inc., as part of a recent consent agreement between it and the FTC.

Federal Trade Commission  
Los Angeles Regional Office

A. The placement of the advertisement in the newspapers shall be as follows:

1. Said advertisements shall appear at least once per month in each and every newspaper and magazine identified above, for six consecutive months commencing thirty (30) days after the date this order becomes final.
2. Said advertisement shall appear in the Sunday edition of each above-identified newspaper.
3. Respondents shall request placement of the advertisements in the Sports section of each newspaper.

B. The size of the advertisement shall be as follows:

1. The advertisement to be placed in the *Los Angeles Magazine* shall be equal to or larger than one column in width and the full length of the page.

2. The advertisement to be placed in the *Los Angeles Times*, *Santa Ana Register* and *Herald Examiner* shall be equal to or larger than two columns in width and four inches in length.

C. Respondents shall endeavor to obtain bulk rates for placing said advertisements at the lowest possible rates. Respondents shall spend no less than \$8,000.00 for placing the advertisement required by this section.

D. The format, type size and type face of the advertisement shall be subject to the approval by the Commission or its representative prior to its use by respondents.

#### IV

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

*It is further ordered*, That for a period of five (5) years from the effective date of this order, each individual respondent shall promptly notify the Commission of the discontinuance of his/her present business or employment and of his/her affiliation with a new business or employment which is engaged, during the time of such employment or affiliation, in methods of treating baldness, thinning hair, loss of hair or of the replacement of lost hair. Such notice shall contain respondent's current business address, a statement of the nature of the business or employment in which the respondent is newly engaged and a description of the respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

*It is further ordered*, That respondents shall, within sixty (60) days after service upon them of this order, and within thirty (30) days after termination of the advertising required by Section III 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

## MID CITY CHEVROLET, INC., ET AL.

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

*Docket C-3014. Complaint, March 17, 1980—Decision, March 17, 1980*

This consent order requires, among other things, a Laurel, Md. motor vehicle dealer and its corporate officer to cease, in connection with the advertising and sale of an automobile retrofit device known as the Power Pak, making false or unsubstantiated fuel economy claims and misrepresenting the purpose, content or conclusion of tests and surveys. Advertisements referring to fuel economy improvement resulting from the installation of an automobile retrofit device must include a disclaimer and at least one fuel economy claim expressed in miles per gallon. Further, respondents are required to send to each consumer who had purchased a Power Pak from them a letter offering a full refund of the purchase and removal of the device at no charge. All refund requests must be honored in a timely manner and relevant records maintained for a period of three years.

*Appearances*

For the Commission: *Laurence M. Kahn.*

For the respondents: *Lynne Perkins-Brown, Oxon Hill, Md.*

## 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 Mid City Chevrolet, Inc., a corporation and John Tyler, individually and as an officer of the 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:

PAR. 1. Respondent Mid City Chevrolet, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 501 Washington Boulevard, Laurel, Maryland.

Respondent John Tyler is president of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents, in conjunction with their business of selling cars, trucks, and vans, are now, and for some time last past have been, engaged in purchasing, offering for sale, sale, distribution, and advertising of a product known as Power Pak (hereinafter "product"), which product is advertised to be a means of improving fuel economy in automobiles. Said product is an automobile retrofit device, as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975 15 U.S.C. 2011. Respondents, in connection with their offering for sale of said product, have disseminated, published and distributed and now disseminate, publish and distribute advertisements and promotional material for the purpose of promoting the sale of said product, as well as for the purpose of promoting the sale of respondents' cars, trucks, and vans.

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated and caused the dissemination of certain advertisements for said product by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in newspapers with national circulations and the transmission of advertisements through radio stations with sufficient power to broadcast across state lines and into the District of Columbia for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce.

PAR. 5. Among the advertisements and other sales promotional materials is the material identified as Exhibit A which is attached hereto.

PAR. 6. Through the use of advertisements referred to in Paragraph Five and other advertisements and sales promotional materials, respondents represented and now represent, directly or by implication, that

a. the Power Pak when installed in a typical automobile will significantly improve fuel economy;

b. under normal driving conditions, a typical driver will ordinarily obtain a fuel economy improvement of 25% to 50% when Power Pak is installed in his/her automobile;

c. competent scientific tests prove the fuel economy claims made for Power Pak.

PAR. 7. At the time respondents made the representations alleged in

Paragraph Six of the complaint, they did not possess and rely upon a reasonable basis for such representations. Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 8. In truth and in fact, contrary to respondents' representations in Paragraph Six:

a. Power Pak when installed in a typical automobile will not significantly improve fuel economy;

b. under normal driving conditions, a typical driver will not ordinarily obtain a fuel economy improvement of 25% to 50% when Power Pak is installed in his/her automobile;

c. no competent scientific tests prove the fuel economy claims made for Power Pak.

Therefore, said advertisements are deceptive, misleading or unfair.

PAR. 9. Exhibit A and other advertisements represent, directly and by implication, that respondents had a reasonable basis for making, at the time they were made, the representations alleged in Paragraph Six. In truth and in fact, respondents had no reasonable basis for such representations. Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of automobile retrofit devices and in the sale of cars, trucks, and vans.

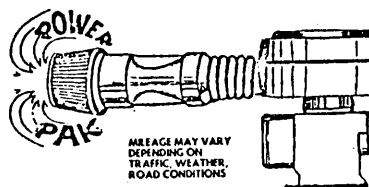
PAR. 11. The use by respondents of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of products sold by respondents by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, 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 or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

*EXHIBIT A*

**AMAZING OFFER—EXCLUSIVELY AT MID-CITY CHEVROLET**  
***INCREASE YOUR GAS MILEAGE UP TO 25%***  
 (OR MORE PER GALLON)  
**TESTS HAVE SHOWN FROM 25%—50% INCREASE REALIZED**

A recent breakthrough in high energy technology now makes possible a fuel conservation system which utilizes advanced concepts of humidification and increased air flow. Do not confuse this system with water injection, vaporization, or similar metering systems. POWER PAK employs a totally new, patented process, that is a result of dedicated, scientific research. Both POWER PAK users and test organizations alike testify that POWER PAK will add at least 25% to your highway mileage and performance. If you drive larger vehicles or at high RPMs, you can expect even more.



MESSAGE MAY VARY  
 DEPENDING ON  
 TRAFFIC, WEATHER,  
 ROAD CONDITIONS

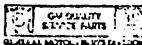
**EXCLUSIVE AT MID-CITY CHEVROLET**  
**MID-CITY WILL INSTALL AT NO ADDITIONAL  
 COST THE AMAZING NEW "POWER-PAK" UNIT  
 ON ALL 1979 MID-CITY CHEVROLET CARS, TRUCKS & VANS**

**WHAT POWER PAK MEANS TO YOUR VEHICLE:**

- **IMPROVED GAS MILEAGE**  
up to 100 extra miles per tank (Avg. 20 Gal Tank)
- **INCREASED HORSEPOWER**  
proven under race conditions
- **COOLER ENGINE OPERATION**  
super humidified air does it
- **LESS EMISSIONS**  
the result of better combustion
- **CLEANER ENGINE OPERATION**  
removes carbon build-up
- **WORKS ON LOWER OCTANE FUEL**  
use regular, not super
- **NO PINGING**—avoids costly engine damage.

**ADDITIONAL SAVINGS**  
**SAVE UP TO \$2500**  
**ON 1979 COMPANY  
 OFFICIAL DEMONSTRATORS  
 PLUS—POWER PAK**

- CHEVROLET CARS
- CHEVROLET TRUCKS
- CHEVROLET VANS



KEEP THAT GREAT GM FEELING  
 WITH GENUINE GM PARTS

CALL FOR APPOINTMENT AND  
 WE WILL MEET YOU AT YOUR PLACE  
 OF EMPLOYMENT OR HOME

THE LOW OVERHEAD DEALER IN THE HEART OF LAUREL, MD. JUST MINUTES FROM 495—NORTH ON U.S. 1

**MID-CITY**  
**AUTO & TRUCK DISCOUNT CENTER**  
 501 WASHINGTON BOULEVARD, LAUREL, MD.  
 LOCAL 725-2700      WASH. 953-3083

## 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 respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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 such 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 sixty (60) days, now in the further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mid City Chevrolet, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business at 501 Washington Boulevard, Laurel, Maryland. Respondent John Tyler 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

## PART I

*It is ordered,* That respondents Mid City Chevrolet, Inc., a corporation and John Tyler, individually and as an officer of the corporation, their successors and assigns, either jointly or individually, 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 the automobile retrofit device known as Power Pak, as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the automobile retrofit device known as Power Pak will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle without otherwise adjusting parameters on the vehicle's engine to conditions other than those specified by the vehicle's manufacturer.

## PART II

*It is further ordered,* That respondents, their successors and assigns, either jointly or individually, 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 automobile retrofit device as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- a. representing, directly or by implication, that such device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle unless (1) such representation is true, and (2) at the time of making such representation, respondents possess and rely upon written results of dynamometer testing of such device according to the then current urban and highway driving test cycles established by the Environmental Protection Agency and these results substantiate such representation and (3) where the representation of the fuel economy improvement is expressed in miles per gallon or percentage, all advertising and other sales promotional materials, which contain the representation expressed in such a way, must also contain, in a way that clearly and conspicuously discloses it, the following disclaimer: "REMINDER: Your actual fuel saving may be less. It depends on the kind of driving you do, how you drive and the condition of your car;"
- b. misrepresenting in any manner the purpose, content, or conclusion of any test or survey pertaining to such device;
- c. failing to disclose clearly and conspicuously in any advertisement



## Decision and Order

or other promotional material that refers or relates in any way to such device the fuel economy improvement, if any, in miles per gallon which may be expected from the installation of such device on motor vehicles.

## PART III

1. Respondents, within thirty (30) days of the date on which this order becomes final, shall send a copy of the letter marked Exhibit B via first class mail to each consumer who purchased from them the device known as Power Pak and whom respondents are able to locate from information in their files. Respondents, upon receiving, within one year of the date upon which this order becomes final, either a written or a verbal request for a refund of Power Pak's purchase price from any consumer who purchased Power Pak from them, shall, within one week of the date of such request: 1) refund the full purchase price of Power Pak, including any installation charges and taxes, and 2) remove Power Pak from the consumer's vehicle at no charge to the consumer, and 3) at no charge to the consumer, make any adjustments to the vehicle's engine which are made necessary by Power Pak's removal. The envelopes in which Exhibit B is enclosed shall contain no restrictions against forwarding and shall be plain white envelopes with no marking other than Mid City Chevrolet's name and return address and the name and address of the consumer purchaser.

2. Respondents shall supply, as part of their initial compliance report, noted in Part VIII below, a list consisting of the name and address of each and every person whom respondents were able to locate from information in their files, and a list consisting of the name and address of each and every person to whom Exhibit B was sent. Respondents shall supply as part of their supplemental compliance report, noted in Part VIII below, a list consisting of the name and address of each and every person requesting a refund and the date of that person's request, and a list consisting of the name and address of each and every person to whom refund was made, the dollar amount of that person's refund, and the date upon which that person received the refund. Each such list shall contain the names of individuals in alphabetical order.

## PART IV

*It is further ordered,* That respondents, their successors and assigns, either jointly or individually, 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 automobile retrofit device,

as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain the following accurate records which may be inspected by Commission staff members upon fifteen (15) days' notice: copies of and dissemination schedules for all advertisements, sales promotional materials, and post-purchase materials; records of the number of pieces of direct mail advertising sent in each direct mail advertisement or which contradict or tend to contradict any claim, made directly or by implication, concerning such device, which is a part of the advertising; sales promotional material, or post-purchase materials disseminated by respondents directly or through any business entity; documents indicating the names and addresses of all persons requesting refunds; documents indicating the names and addresses of all persons receiving refunds; documents indicating, for each person receiving a refund, the amount that person received. Such records shall be retained by respondents for a period of three (3) years from the last date any such advertising, sales promotional, or post-purchase materials were disseminated.

## PART V

*It is further ordered,* That the corporate respondent shall forthwith distribute a copy of this order to each of its operating divisions, to its successors and assigns, and to each of its officers, agents, representatives, or employees who are engaged in the preparation and placement of advertisements, and that the individual respondent shall forthwith distribute a copy of this order to each of his agents, representatives, employees, successors and assigns.

## PART VI

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to the effective date of 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.

## PART VII

*It is further ordered,* That the individual respondent named herein

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promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's position in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

## PART VIII

*It is further ordered*, That the respondents shall within sixty (60) days after service upon them of this order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they complied with this order.

## EXHIBIT B

(date letter sent by Mid City  
inserted here)

Mid City Chevrolet  
501 Washington Boulevard  
Laurel, Maryland 20810  
(301) 725-2700  
(202) 953-3883

## REFUND OFFER

Dear Customer:

Some time ago you bought a device called Power Pak from us. Our ads claimed your car would use far less gas with it, but we have since become aware that we did not have adequate grounds for making this claim, and Power Pak may well not give you the gas mileage improvement you expected, if any at all. Therefore, if you are not satisfied with the results you have received from Power Pak, we are offering you a full refund of the price you paid. At no charge, we will also remove Power Pak from your car and will perform any adjustments to your engine made necessary by its removal.

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To get the refund, please call or write us or just stop in and ask for a refund. If we can't remove Power Pak right then, we will remove it and refund your money within one week of the date we hear from you. This offer expires (date one year after date order becomes final inserted here) so don't delay.

Sincerely,

Mid City Chevrolet

IN THE MATTER OF  
AMERICAN HOME PRODUCTS CORPORATION, ET AL.

*Docket 8918. Interlocutory Order, March 18, 1980*

ORDER DENYING MOTION TO STAY APPEAL

Respondent American Home Products (AHP) has filed a motion requesting the Commission to stay AHP's appeal pending its consolidation with other cases involving advertising claims for analgesic products,<sup>1</sup> or, in the alternative, to stay consideration of a motion filed by Sterling Drug Inc. in one of the other cases (Dkt. 8919).<sup>2</sup> For the reasons stated below, AHP's motion for a stay is denied.

One of the grounds asserted by AHP as a basis for its motion is that Commission consideration of Sterling's proposed consent order in Dkt. 8919 would "prejudge" AHP's appeal in this proceeding. AHP contends that this prejudgment would occur because the proposed consent order in Dkt. 8919 contains provisions applicable to Sterling's over-the-counter combination analgesics which are very similar to provisions contained in the order entered by the Administrative Law Judge against AHP in this proceeding. AHP's contention that Commission consideration or disposition of a proposed consent order in another, factually-related proceeding would somehow disqualify the Commission from deciding this appeal is without merit, and AHP has cited no precedent for it. A tribunal which in the context of a prior proceeding has passed on factual issues is not precluded from passing upon identical issues in a subsequent adjudication even when the two proceedings derive from the same set of facts. See, e.g., *Pangburn v. CAB*, 311 F.2d 349, 358 (1st Cir. 1962). Here, by contrast, Commission consideration of a proposed consent order in Docket No. 8919 requires no determination on the facts at issue in that proceeding; in addition, the two proceedings derive from distinct, albeit overlapping, sets of facts. Moreover, if AHP's position were correct, the Commission might be prevented from giving any consideration to the other pending analgesics cases, a result which would frustrate the exercise of the Commission's adjudicative function. Cf. *FTC v. Cement Institute*, 333 U.S. 683, 700-01 (1948).

AHP argues in addition that its appeal should be stayed pending its consolidation with any appeals from *Sterling Drug* and *Bristol-Myers* because of the "risk of unfairness inherent in deciding the pending analgesics cases on a piecemeal basis." This appears to be essentially

<sup>1</sup> *Sterling Drug, Inc.*, Dkt. 8919; *Bristol-Myers Co.*, Dkt. 8917.

<sup>2</sup> Sterling's motion sought to withdraw from adjudication all issues relating to Sterling's over-the-counter combination internal analgesics and to enter a cease and desist order applicable to these products.

the same concern about the potential competitive impact of an order against AHP which it has expressed before and which we have found to be premature. As we indicated in our orders dated November 3, 1978 denying an earlier motion to stay, and November 8, 1979 denying a motion for reopening of proceedings, the Commission is capable of considering, during the course of its review on appeal, the possible competitive impact of any order that it might enter if liability is found. We see no need to stay our consideration of this appeal.<sup>3</sup>

AHP's alternative request to stay consideration of the motion filed by Sterling Drug in Dkt. 8919 to withdraw certain issues from adjudication is not properly raised in this proceeding. If there were any reason to provide relief to AHP for the concerns it raises—and we have explained above that our view is to the contrary—such relief would be an order affecting the instant proceeding and not a separate proceeding to which AHP is not a party. Accordingly,

*It is ordered,* That the Motion of American Home Products Corporation for Stay of this Proceeding Pending Consolidation of all Three Pending Analgesics Cases on Appeal be, and the same hereby is, denied.

Commissioner Pitofsky did not participate.

<sup>3</sup> If the Commission were to find liability, and if it were to enter an order with terms giving rise to a new question upon which respondent had no opportunity to argue earlier, AHP would have an opportunity to petition for reconsideration under Rule 3.55, 16 C.F.R. 3.55. Under that provision, the Commission may stay the effective date of its order.

IN THE MATTER OF  
GENERAL FOODS CORPORATION

*Docket 9085. Interlocutory Order, March 28, 1980*

ORDER REMANDING MOTION FOR COURT ENFORCEMENT OF SUBPOENA

The administrative law judge has certified to the Commission a motion by General Foods for court enforcement of a subpoena *duces tecum* issued jointly to Jorge Wolney Atalla, as Chairman of the Board of Hills Bros. Coffee, Inc., and to Copersucar, c/o Jorge Wolney Atalla. The administrative law judge recommends that court enforcement be limited to Specifications 4 and 5, since he believes the other specifications are either duplicative or call for nonessential material. In brief, Specifications 4 and 5 request documents concerning the reasons for Copersucar's acquisition of Hills Bros. and the changes made in Hill Bros.' operations by Mr. Atalla or Copersucar.

Copersucar and Hills Bros. have raised two issues concerning the enforceability of this subpoena. First, Copersucar contends that, insofar as the subpoena seeks documents located in Brazil, it exceeds the Commission's statutory authority under Section 9 of the Federal Trade Commission Act, which provides that "the production of . . . documentary evidence may be required from any place in the United States." Copersucar's interpretation notwithstanding, Section 9 authorizes the Commission to subpoena documents located abroad, as well as documents located anywhere within the United States. *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, Misc. No. 78-0194 (D.D.C., filed Feb. 14, 1980); cf. *CAB v. Deutsche Lufthansa Aktiengesellschaft*, 591 F.2d 951 (D.C. Cir. 1979); *FMC v. DeSmedt*, 336 F.2d 464 (2d Cir.), cert. denied, 385 U.S. 974 (1966). Thus, nothing in Section 9 would preclude enforcement of the subpoena.

Second, Hills Bros., acting on Mr. Atalla's behalf, has objected that the subpoena was not served in compliance with Rule 4.4(a)(1)(i) of the Commission's Rules of Practice, which require that service by mail of complaints, orders and other process under Section 5 be made to a person or corporation at his, her, or its residence or "principal office or place of business." The ALJ has read the rule to authorize service either at the principal office or *any* place of business of the party to be served. Hills Bros. contends that the word "principal" qualifies both "office" and "place of business," and that Hills Bros.' headquarters do not constitute Copersucar's or Mr. Atalla's principal place of business. We agree with Hills Bros.' interpretation of the rule.<sup>1</sup> This conclusion

<sup>1</sup> Rule 4.4(a)(1)(i) is derived from Section 5(f) of the Federal Trade Commission Act. While we have found no cases directly on point and the legislative history is silent, there are persuasive grounds to infer that our interpretation of

(Continued)

does not settle the question of service, however, since it might also be argued (1) that Rule 4.4(a)(1)(i) is satisfied by service on a foreign corporation's principal place of business in the United States, and that Hills Bros. constitutes Copersucar's principal place of business in the United States; or (2) that the more lenient provisions of Rule 4.4(a)(2) govern service in this instance.

We do not reach these issues, which have not been fully briefed by the parties, because we find it necessary to remand the matter to the ALJ for further proceedings on the more basic issue of personal jurisdiction. While the Commission's subpoena authority may reach beyond the borders of the United States, it is not without limits. At a minimum, the enforceability of Commission subpoenas is circumscribed by the authority of an enforcement court, under Section 9, to exercise personal jurisdiction over the subpoena recipient. It would be a hollow gesture for us to authorize enforcement of a subpoena without even a threshold showing that the subpoenaed party is likely to be amenable to the jurisdiction of the enforcement court. Moreover, the fact that the assertion of enforcement jurisdiction over companies and documents located abroad may affect the interests and policies of foreign governments and raise questions of international comity warrants at least a threshold jurisdictional inquiry.

The information we have been given here is too sketchy to inspire confidence that even a colorable claim of jurisdiction over Copersucar can be maintained. The company is located in Brazil and purports to have no holdings in the United States other than Hills Bros. It is true that Hills Bros. is wholly owned by Copersucar and that Mr. Atalla, evidently one of Copersucar's principal investors, is the Chairman of the Board of Hills Bros. However, we are also told that, according to a "formal interview," Hills Bros. is "fairly autonomous" of Copersucar and that Mr. Atalla comes to San Francisco but once a year, staying only briefly before returning home to Brazil. These few facts are insufficient by themselves to warrant the assertion of enforcement jurisdiction over Copersucar where, as here, it is neither the target of a Commission investigation, nor charged with a violation of Section 5 of the Federal Trade Commission Act or any other statute administered by the Commission.

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the language in the rule and statute is in accord with congressional intent. The terms "principal office" and "principal place of business" are used commonly in corporation codes, bankruptcy laws, and jurisdictional statutes. However, in some contexts, what qualifies as a principal office may not necessarily be a principal place of business. See *1 Moore's Federal Practice*, §0.77[2-1]. It thus seems reasonable to assume that Congress combined the two formulations in Section 5(f) to ensure that service would be upheld regardless of the category into which the place of delivery was deemed to fall. This interpretation ensures both that service is proper and that process is delivered to responsible employees of the business concerned. If, on the other hand, the ALJ's interpretation were to be accepted, service would be upheld when made at any place of business, no matter how ill-equipped it might be to process a subpoena or transmit it quickly to appropriate company officials.



Since the jurisdictional issue was not squarely presented below, we remand to the ALJ for further proceedings on this question. As the party that seeks documents from Copersucar, General Foods will have the burden of establishing a reasonable basis for the Commission to invoke the exercise of a district court's enforcement jurisdiction. In cases involving nonresident corporations, the appropriate test is whether the party concerned has sufficient contacts with the forum that the exercise of personal jurisdiction "does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940); *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137, 1143-44 (7th Cir. 1975); see also *Restatement (Second) of Conflict of Laws* §§10, 50, 52 (1969). General Foods may be able to demonstrate that personal jurisdiction over Copersucar is reasonable because that company is, in effect, itself doing business in this country through its operation and control of Hills Bros. See, e.g., *SCM Corp. v. Brother Int'l Corp.*, 316 F.Supp. 1328 (S.D.N.Y. 1970); *Flank Oil Co. v. Continental Oil Co.*, 277 F.Supp. 357 (D. Colo. 1957); *S.M. Stein Enterprises v. Irish Int'l Air Lines*, 236 F.Supp. 71 (1964). Even if there are insufficient grounds for establishing jurisdiction on that basis, the exercise of jurisdiction over Copersucar may still be reasonable in view of all of that company's contacts with interstate commerce and its relationship to the case at hand. *Cryomedics, Inc. v. Spembly, Ltd.*, 397 F.Supp. 287 (D.Conn. 1975); *SCM Corp.*, *supra*; see also *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

In outlining how General Foods might meet its burden of justifying the exercise of enforcement jurisdiction, we do not suggest that the issue can be resolved through application of one or two mechanical tests. Unfortunately, there are no hard and fast rules for determining when a foreign corporation's contacts with a forum are such that it may reasonably fall under that forum's jurisdiction; decisions in this area can be made only on the relevant facts of each particular case. Moreover, the problem of determining jurisdiction is especially difficult in this instance because Copersucar is not a respondent in the administrative proceeding, but is merely a party from whom General Foods seeks discovery. Accordingly, we suggest that the ALJ invite Hills Bros., Copersucar, and the parties to the proceeding to brief the relevant criteria that should be considered in determining whether jurisdiction may be exercised over Copersucar.

Given the intricacy of the jurisdictional issue, it warrants noting that the subpoena at issue here appears to have been properly served on Hills Bros., since it was addressed to Mr. Atalla as Hills Bros.' Chairman of the Board. See *FTC v. Anderson*, 442 F.Supp. 1118 (D.D.C.

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1977), *aff'd.* CCH 1979-2 Trade Cas. ¶62837 (D.C.Cir. 1979). General Foods may therefore be entitled to production of whatever documents Hills Bros. has in its possession that respond to Specifications 4 and 5 of the subpoena. As the ALJ noted in his circulation, it seems likely that Hills Bros. will have responsive documents in its San Francisco office, if so, they may provide sufficient information to meet the needs of General Foods in this case. We will not order that court enforcement be sought against Hills Bros. at this time, however, because General Foods has apparently failed to request such action. Nevertheless, enforcement would seem to be appropriate if the ALJ certifies such a motion to us in the future. Accordingly,

*It is ordered,* That General Foods' motion that the Commission seek court enforcement of the subpoena *duces tecum* issued to Jorge Wolney Atalla and Copersucar be, and hereby is, remanded to the administrative law judge for proceedings to determine whether there is a reasonable basis for the Commission to invoke an enforcement court's jurisdiction over Copersucar.

## Complaint

IN THE MATTER OF

S. KLEIN, INC.

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

*Docket C-3015. Complaint, April 4, 1980—Decision, April 4, 1980*

This consent order requires, among other things, a Washington, D.C. retailer of consumer goods to cease entering into layaway agreements which fail to clearly and conspicuously advise customers of their right to revoke transactions and receive refunds of money paid toward the cost of their purchases. Additionally, the order requires the firm to honor cancellations; furnish credit customers with cost disclosures required by Federal Reserve Systems regulations; and refund to eligible customers all monies known to have been forfeited under layaway transactions since August 1, 1975.

*Appearances*

For the Commission: *Bernard Rowitz and Irvin E. Abrams.*

For the respondent: *Joel P. Bennet and Jacob A. Stein, Wash., D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Truth In Lending Act, as amended, 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 S. Klein, Inc., 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 S. Klein, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1227 F St., N.W., Washington, D.C.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of women's ready-to-wear clothing and accessories and other consumer goods and products to the general public at retail.

## Complaint

## COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, 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 ordinary course and conduct of its business, as aforesaid, respondent offers to sell and distribute merchandise in commerce by operating a number of retail clothing stores located in the District of Columbia and the Commonwealth of Virginia, and by causing merchandise to be shipped from its various suppliers to its clothing 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 or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, and in connection with the retailing of women's ready-to-wear clothing, accessories and other consumer goods and products, respondent now causes and for some time last past has caused, certain of its credit customers to enter into binding retail contracts which are referred to by respondent as "layaways." Customers entering into these contracts are permitted, after making a downpayment, to select merchandise until such balance is paid in full. Many, if not all, of these contracts contain the following provision:

... If payments are not made regularly, or if 15 days are allowed to pass without a payment being made, claim on merchandise and deposit are forfeited. . . .

Respondent, by and through the use of the above contract provision, denies customers the right to receive a refund of any amounts paid toward the purchase price of said merchandise upon default of the layaway contract.

The condition imposed upon respondent's layaway customers through the use of the above language and contract provision, is adhesive; is to the disadvantage of said customers; is not offset by any reasonable value received; and is included without regard to the actual risk of nonpayment or loss borne by respondent. Therefore, such contract provision is contrary to public policy and, the use of said contract provision was and is unfair.

PAR. 5. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in or affecting commerce, with corporations, partner-

ships, firms and individuals engaged in the sale of merchandise of the same general kind and nature as those sold by respondent.

PAR. 6. The aforementioned acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition, in or affecting commerce, and unfair acts and practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### COUNT II

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

PAR. 7. In the ordinary course and conduct of its business, as aforesaid, respondent is a creditor and regularly extends consumer credit, as "creditor" and "consumer credit" are defined in Regulation Z, the implementing regulation of the Truth In Lending Act, as amended, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 8. Subsequent to July 1, 1969, respondent in the ordinary course and conduct of its business as aforesaid, has caused and is causing customers to execute layaway contracts, as described in Paragraph Four herein, for the sale of merchandise. Under said contracts, customers agree to pay for merchandise in more than four installments. Also, under said contracts, said respondent retains the merchandise for the customers until the total price is paid in full. The contracts do not, however, clearly and conspicuously give to customers the right to revoke the purchase at any time prior to full payment of the total price and delivery of the merchandise, and to request and receive a full and prompt refund of any amounts paid toward the total price of the merchandise. Said respondent's layaway sales are, therefore, credit sales as "credit sale" is defined in Regulation Z. By and through the use of its layaway contracts, respondent:

1. Fails to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

2. Fails to use the term "cash price," as defined in Section 226.2(i) of Regulation Z to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.

3. Fails to use the term "cash downpayment" to describe the

## Decision and Order

downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

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

5. Fails to use the term "amount financed" to describe the amount of credit of which the customer will have the actual use, as required by Section 226.8(c)(7) of Regulation Z.

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

7. Fails to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

8. Fails to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

PAR. 9. Pursuant to Section 103(s) of the Truth In Lending Act, as amended, respondent's aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act, as amended.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended, and the Truth In Lending Act and the regulations promulgated thereunder;

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issued its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent S. Klein, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 1227 F St., NW, Washington, D.C.

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

#### ORDER

For the purpose of this order, the term "layaway" shall mean any transaction whereby the customer agrees to purchase goods or products at the time of the transaction, by means of a downpayment and subsequent payment or payments, with the respondent retaining possession of the goods or products until the agreed payment or payments are completed.

*It is ordered,* That respondent, S. Klein, Inc., a corporation, its successors and assigns and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and distribution of women's ready-to-wear clothing and accessories or any other consumer goods or products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Entering into any layaway transaction, directly or by implication, either orally or in writing, unless the customer has no contractual obligation to make payments and may, at his or her option, revoke a purchase made under such transaction and receive prompt refund of any amounts paid toward the cash price of the merchandise, less a

reasonable service charge not to exceed ten percent of the cash price, with a maximum of five dollars for merchandise costing ninety dollars or less and a maximum of ten dollars for merchandise costing more than ninety dollars; and, the customer receives the following written disclosure, clearly and conspicuously, at the time of the transaction, in not less than 10 point bold face type, of his or her rights and conditions to a prompt refund:

NOTICE OF YOUR RIGHT TO CANCEL

YOU MAY CANCEL THIS TRANSACTION AT ANY TIME AND RECEIVE A PROMPT REFUND OF ALL AMOUNTS PAID BY YOU, LESS A SERVICE CHARGE.

THE SERVICE CHARGE WILL BE NO MORE THAN 10% OF THE CASH PRICE WITH A MAXIMUM OF \$5.00 FOR MERCHANDISE COSTING \$90.00 OR LESS; AND A MAXIMUM OF \$10.00 FOR MERCHANDISE COSTING MORE THAN \$90.00.

IF YOU WANT TO CANCEL THIS TRANSACTION, YOU MUST DO SO IN PERSON AT THE STORE IN WHICH THE MERCHANDISE IS HELD.

*It is further ordered,* That respondent make prompt refund, of any amounts paid toward the cash price of merchandise, to customers who revoke purchases made under layaway transactions as described in the paragraph immediately above.

*It is further ordered,* That respondent make a cash refund or give a merchandise credit, at the customer's option, of all moneys known to be forfeited, or which should have been known to be forfeited, by its customers under layaway transactions, less a \$1.00 service charge, from August 1, 1975, to the date this order becomes final, and in this connection respondent shall:

A. Compile a list of the names and last known addresses of all customers who entered into layaway transactions for the purchase of respondent's goods or products and who have forfeited moneys on said transactions during the period from August 1, 1975, to the date this order becomes final. Said list is to contain the individual amounts of such forfeitures.

B. Send notice letters, which are attached, herein, as Appendices A and B, within one month of the date this order becomes final, by first class mail, to each customer referred to in subparagraph A above, advising each customer of his or her right to a refund, the amount of the refund, and his or her option of receiving a cash refund or a merchandise credit; *provided, however,* that with respect to those customers whose letters are returned to respondent undelivered, respondent shall make a reasonable effort to obtain a current mailing address for each such customer. Respondent's obligation to make



refunds under this paragraph of the order shall terminate after its efforts to send notice letters as outlined above have been unsuccessful, but in no event shall such obligations with respect to such customers referred to in subparagraph A above expire prior to one year after the date this order becomes final.

C. Make such refunds available immediately upon the receipt of the information set forth in Appendix B.

D. Maintain a list which contains the following data: name and address of each customer who received a refund; the date it was refunded; and the amount of such refund.

*It is further ordered,* That respondent, S. Klein, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any 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 CFR 226) of the Truth In Lending Act (Pub. L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to make the consumer credit cost disclosure required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

2. Failing to use the term "cash price," as defined in Section 226.2(n) of Regulation Z, to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.

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

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

5. Failing to use the term "amount financed" to describe the amount of credit of which the customer will have the actual use, as required by Section 226.8(c)(7) of Regulation Z.

6. 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 required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such

payments using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

8. Failing to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) 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 forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in layaway sales, advertising or consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging receipt of said order from all such personnel.

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

*It is further ordered,* That respondent maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of its continuing compliance with all the above terms and provisions of this order.

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

#### APPENDIX A

\_\_\_\_\_  
(Date)

#### IMPORTANT NOTICE OF YOUR RIGHT TO A REFUND

Dear Customer:

S. Klein, Inc., has entered into an agreement with the Federal Trade Commission to give you a cash refund or, at your option, a merchandise credit for moneys forfeited by you as the result of your layaway transaction with us. All such refunds, however, are subject to a one dollar service charge.

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Our store records indicate that your refund amounts to (amount). Any inquiries regarding this refund should be directed to S. Klein, Inc. at (telephone number).

In order to obtain this refund, please bring the enclosed form, in person, to our store located at 1227 F Street, N.W., Washington, D.C.

Sincerely,

S. Klein, Inc.

## APPENDIX B

NOTICE OF ACCEPTANCE OF REFUND

I hereby accept the refund offered by S. Klein, Inc., and I have checked below the way that I wish to receive it.

1.  Cash Refund
2.  Merchandise Credit

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
(Number & Street)

\_\_\_\_\_  
(City - State)

\_\_\_\_\_  
(Customer's Signature)

\_\_\_\_\_  
(Date)

**NOTE:** Bring this Notice to S. Klein, Inc. in person for a refund.

IN THE MATTER OF  
PAY 'N PAK STORES, INC.

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

*Docket C-2780. Decision, Jan. 16, 1976 — Modifying Order, April 9, 1976*

This order reopens proceeding and modifies a consent order issued on Jan. 16, 1976, 41 FR 9862, 87 F.T.C. 99, against a chain of hardware and plumbing supply stores by allowing a general limitation disclosure on "closeout" merchandise but not as to "clearance" merchandise; further, the disclosure requirements of order paragraphs III and IV.B are changed by deleting the word "specifically."

ORDER REOPENING THE PROCEEDING AND MODIFYING DECISION AND  
ORDER

On January 16, 1976, the Commission issued a decision and order against Pay 'N Pak Stores, Inc. in connection with the availability and pricing of advertised specials. The order includes a provision which allows Pay 'N Pak to advertise merchandise for sale when there is a clear and conspicuous disclosure of any specific exception, limitation or restriction with respect to store, item or price.

On October 31, 1979, Pay 'N Pak Stores, Inc. petitioned the Commission pursuant to Section 2.51 of the Commission's Organization, Procedures and Rules of Practice, 16 CFR 2.51, to reopen the proceeding and modify the decision and order to allow a more general limitation disclosure for "closeout" and "clearance" merchandise. "Closeout" merchandise was defined as merchandise whose entire inventory is being disposed of at a reduced price and which is not planned to be restocked. "Clearance" merchandise was defined as merchandise whose price has been reduced to reduce the inventory of such merchandise.

After due consideration, the Commission believes that the public interest will be served by modifying the decision and order to allow a general limitation on "closeout" merchandise but not as to "clearance" merchandise.

*It is ordered,* That the proceeding is reopened.

*It is further ordered,* That the decision and order issued on January 16, 1976 is modified as follows:

The following language is added to the first proviso in Provision I:

For closeout items, in instances where an advertisement is for more than one store, the specific limitation will be deemed to be complied with by disclosures that "quantities are limited to stock on hand" and that the items are closeout items. Closeout designation is only appropriate for items where Pay 'N Pak both is disposing of the entire inventory of

an item at a reduced price and is not planning on restocking the item. For all advertised items not meeting the closeout exception, quantity limitations must specify the number available.

This addition will follow the sentence "Provided it shall be deemed a violation . . . the customer's specifications."

The disclosure requirements of III and IV.B are modified by deleting the word "specifically." Provision III will read:

III. *It is further ordered,* That respondent cease and desist from disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless the advertisement contains a statement that: "Each of the advertised items is required to be readily available for sale at or below the advertised price in each Pay 'N Pak store, except as noted in this ad," and a statement of the specific period during which the items will be available at the advertised prices.

Provision IV.B will read:

B. A statement that: "All items listed in the above advertisement are required to be readily available for sale at or below the advertised price, except as noted in the above advertisement."

Complaint

95 F.T.C.

IN THE MATTER OF

KETTLE MORAINÉ ELECTRIC, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-3016. Complaint, April 16, 1980 — Decision, April 16, 1980*

This consent order requires, among other things, a Kewaskum, Wis. manufacturer, distributor and installer of cellulose insulation to cease disseminating advertising or promotional material containing false or unsubstantiated representations concerning the performance characteristics of its products. The order further requires that scientific tests be conducted on insulation previously manufactured by the company and already installed to identify buildings that might contain inadequate fire resistant insulation. Owners of those buildings must be notified of the potential fire hazards, and substandard material timely replaced by insulation that meets government specifications. Should such replacement be declined, the firm must install a smoke detector system acceptable to the consumer.

*Appearances*For the Commission: *Jerome S. Lamet.*For the respondents: *Gerald Kiefer, McKenna & Kiefer, Kewaskum, Wis.*

## 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 Kettle Moraine Electric, Inc., a corporation, and Alois J. Beisbier, 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 Kettle Moraine Electric, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at 1261 Fond du Lac Ave., Kewaskum, Wisconsin.

Respondent Alois J. Beisbier is an officer of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices

hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business of manufacturing, distributing, selling, advertising and installing cellulose insulation used in the walls, ceilings and attics of commercial and residential buildings. Cellulose insulation consists primarily of shredded paper and wood, which, unless properly treated chemically, is highly flammable.

PAR. 3. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have, in the ordinary course and conduct of their business, represented directly or by implication in advertising and labeling that the insulation material manufactured, distributed, sold and installed by respondents is safe, non-flammable and in conformance with applicable state and federal standards.

PAR. 5. In truth and in fact:

A. Respondents' insulation product is not adequately treated with fire-retardant chemicals, and is flammable and highly dangerous when installed as insulation. At least one residential fire has occurred involving respondents' insulation product;

B. Respondents did not have and do not have, any reasonable basis for representing that the insulation product they manufacture, distribute, sell and install is non-flammable or meets applicable state and federal standards prior to making those claims; and

C. Respondents have failed to disclose to purchasers of their insulation product that the product is flammable and presents a substantial fire risk if installed as insulation.

PAR. 6. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts and practices, directly or by implication, has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 8. The 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 or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago 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, their attorneys, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Kettle Moraine Electric, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1261 Fond du Lac Ave., in the City of Kewaskum, State of Wisconsin.

Respondent Alois J. Beisbier 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

### I

*It is ordered,* That respondents Kettle Moraine Electric, Inc., its subsidiaries, successors, assigns, officers and directors, and Alois J. Beisbier, individually and as an officer and director of Kettle Moraine Electric, Inc., and respondents' agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, offering for sale, sale or installation of cellulose insulation in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertising or promotional material which misrepresents the performance characteristics of respondents' cellulose insulation.
2. Disseminating or causing to be disseminated any advertisement or promotional material which makes any representation concerning respondents' cellulose insulation unless, at the time such representation is made, respondents have in their possession, and rely on, competent, reliable and well-controlled scientific tests which provide a reasonable basis to believe that the representations are truthful.

### II

*It is further ordered,* That respondents shall conduct competent and reliable scientific tests, utilizing an independent testing laboratory on samples of cellulose insulation manufactured by respondents and installed in residences or other buildings, for which respondents do not have in their possession the results of competent and reliable scientific tests which establish that such insulation met or exceeded the applicable Federal flammability specifications at the time of manufacture. *Provided, however,* that, after being notified of the purpose of such tests, an owner of a residence or other building declines to have such tests conducted, respondents shall have no further obligation to conduct such tests. Such tests shall be to identify residences or other buildings containing cellulose insulation manufactured by respondents that may be inadequately fire resistant.

- a. With respect to cellulose insulation manufactured during the

period December 15, 1977 to April 1, 1978 tests shall be conducted on samples of cellulose insulation installed in all residences or other buildings. All tests must be completed within 120 days of the effective date of this order.

b. With respect to cellulose insulation manufactured during the period September 15, 1977 to December 14, 1977 tests shall be conducted on samples of cellulose insulation installed in residences or other buildings. Identification of those residences or other buildings from which samples of cellulose insulation will be taken for testing shall be by competent and reliable sampling procedures in accordance with acceptable statistical methods; *provided, however*, that identification of any cellulose insulation not meeting applicable Federal flammability standards at the time of manufacture will require respondents to conduct tests on samples of cellulose insulation from all remaining residences or other buildings. All tests must be conducted within 120 days of the effective date of this order.

### III

*It is further ordered*, That respondents shall notify within 10 days of the completion of the tests conducted pursuant to order II, by certified or registered mail (return receipt requested), all consumers whose residences or other buildings are identified pursuant to such tests, as reasonably likely to contain insulation manufactured by respondents that does not meet the applicable Federal flammability specifications at the time of manufacture, that such insulation may be inadequately fire resistant.

### IV

*It is further ordered*, That following the identification of residences or other buildings likely to contain cellulose insulation manufactured by respondents that does not meet the applicable Federal specifications at the time of manufacture:

a. With respect to cellulose insulation in ceilings and attics, respondents shall remove such cellulose insulation and replace it, without cost to the consumer, with insulation which meets the most current specifications established by the Consumer Product Safety Commission under the Emergency Interim Consumer Product Safety Standard Act of 1978 (Pub. Law 95-319) or any subsequent specifications or requirements of that agency, unless the consumer declines to permit removal or replacement. Such removal and replacement shall be performed within 120 days of consumer authorization.

b. With respect to cellulose insulation in walls:

(1) Where the cellulose insulation is installed behind a fire barrier such as 1/2 inch gypsum board or a fully enclosed dry wall, respondents shall deliver by certified or registered mail (return receipt requested) to each such consumer, within ten (10) days, the following notice:

The insulation we put in the walls of your house may pose a fire hazard. If possible, you should have it taken out. If you don't, we'll install a smoke detector alarm near those walls. We'll call you in a few days to find out whether you want the smoke detector. If you do, we'll install it within 30 days. There'll be no charge.

Make sure you don't overload any electrical wiring that runs through those walls. If you blow a fuse or trip a circuit breaker, have an electrician check the wiring right away. Don't change the fuse or push in the circuit breaker until this is done.

(2) Where the cellulose insulation is installed behind wood paneling but not behind a dry wall, respondents shall, without cost to the consumer, remove the paneling, and the cellulose insulation; replace the insulation with insulation which meets the current federal government specification cited above, and replace the wood paneling to its previous condition, unless the consumer declines to permit removal or replacement. Such removal and replacement shall be performed within 120 days of consumer authorization.

c. In any home in which cellulose insulation manufactured by respondents fails to pass the test conducted pursuant to order II (a) and (b), and respondent is either not required to remove the insulation pursuant to order IV b(1) or is required to remove the insulation pursuant to order IV b(2), but does not do so at the consumer's request, respondents shall install in a strategic location within thirty (30) days of the date of testing, a smoke detector alarm system acceptable to the home owner, unless the home owner declines to accept such installation.

## V

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

## VI

*It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present

business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, distribution, sale or installation of cellulose insulation or of his affiliation with a new business or employment in which his own duties and responsibilities involve the manufacture, distribution, sale or installation of cellulose insulation. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

*It is further ordered,* That the respondents herein shall within sixty 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

## GENERAL FOODS CORPORATION

*Docket 9085. Interlocutory Order, April 17, 1980*ORDER DIRECTING GENERAL COUNSEL TO SEEK COURT ENFORCEMENT  
OF SUBPOENA DUCES TECUM

In our order of March 28, 1980, we remanded to the administrative law judge a motion for court enforcement of a subpoena directed jointly to Copersucar, Ltd., and Mr. Jorge Atalla, Chairman of Hills Bros. We noted, however, that it appeared the subpoena had been properly served on Hills Bros., and that we would be willing to order the initiation of enforcement proceedings if a motion were made clearly to that effect.

General Foods has now filed such a motion, which has been certified to us by the administrative law judge. The motion requests enforcement of the subpoena "as limited," referring, we assume, to the ALJ's previous certification for enforcement, which limited the subpoena to Specifications 4 and 5. Accordingly,

*It is ordered,* That the General Counsel be, and hereby is, directed to seek court enforcement of Specifications 4 and 5 of the subpoena duces tecum issued on August 10, 1979.