IN THE MATTER OF

TYSONS CORNER REGIONAL SHOPPING CENTER, ET AL.

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

Docket 8886. Decision, June 10, 1975-Modifying Order, Oct. 21, 1975

Order modifying an earlier order dated June 10, 1975, 85 F.T.C. 987, 40 F.R. 36560, issued against a New York City department store chain by expanding the order with the addition of Paragraph III(C) to permit respondent to negotiate to include agreements in its shopping center leases which would provide that a W&J Sloane furniture specialty store shall be the only tenant in the center primarily engaged in the sale of furniture, home furnishings, and related accessories; and by modifying Paragraph IV(B) to allow respondent to limit distribution of copies of the order to those developers of shopping centers in which respondent is a tenant operating a store containing 50,000 square feet or more.

Appearances

For the Commission: *Anthony Low Joseph, David I. Wilson* and *Maynard F. Thomson.*

For the respondents: *Irving Scher, Weil, Gotshal & Manges,* New York City for City Stores Company.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

By petition dated Oct. 2, 1975, City Stores Company has requested the Commission to modify its order of June 10, 1975, in two respects, described below. The Bureau of Competition has filed an answer objecting to the requested modification.

Respondent requests initially that a new subparagraph III(C) be added which would permit it to negotiate to include agreements in its shopping center leases which would provide that a W&J Sloane furniture specialty store shall be the only tenant in the center primarily engaged in the sale of furniture, home furnishings, and related accessories. (Such clauses would not prevent the competitive sale of these items by tenants such as department stores for whom such sale was not their principal activity.)

We agree with respondent's contention that the agreements it contemplates were not at issue in the litigated case, and under the circumstances the requested narrow modification is appropriate. It should be noted that this change is not intended to signify the Commission's approval of such agreements, but merely to exempt them

from coverage by the order in this matter; in view of the limited scope of the adjudicative proceedings. Given appropriate evidence of anticompetitive consequences the Commission will not hesitate to challenge shopping center lease agreements which provide for exclusive rights of occupancy, (*e.g., People's Drug Stores, Inc.*, File No. 721 0090, agreement containing order to cease and desist; placed on public record for comment, Oct. 5, 1975).

City Stores also requests that the order be modified to require that copies of the order be provided only to developers of shopping centers in which City Stores operates stores larger than 50,000 square feet. Respondent points out that it operates more than 100 stores of size below 50,000 square feet. We agree it is doubtful that the practices condemned by the order are likely to exist as to these stores, and notification of the centers in which they exist would, therefore, seem of slight possible value and might indeed produce confusion as well as modest but unnecessary expense. For the foregoing reasons we will make the second requested modification. This change will not, of course, obviate respondent's obligation to ensure that practices prohibited by the order are not committed in any shopping center in which it is a tenant. Therefore,

It is ordered, That the proceedings be reopened and that the order to cease and desist issued June 10, 1975, be modified by the addition of the following Paragraph III(C):

It is further ordered, That this order shall not prohibit respondent from negotiating to include, including, carrying out, or enforcing an agreement or provision in any agreement which provides that a W&J Sloane furniture specialty store operated by respondent in a shopping center shall be the only tenant in the shopping center primarily engaged in the sale of furniture, home furnishings, and related accessories.

It is further ordered, That Paragraph IV(B) of the order to cease and desist issued June 10, 1975, be modified to read:

Within thirty (30) days after this order becomes final, notify each developer of shopping centers in which respondent is a tenant operating a store containing 50,000 square feet or more of floor space of this order by providing each such developer with a copy thereof by registered certified mail.

IN THE MATTER OF

STEVENS BEDDING WAREHOUSE, INC., ET AL.

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

Docket C-2739. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring fourteen separately incorporated retail stores affiliated with as well as a Chicago, Ill., distributor of home furnishing products, among other things to cease misrepresenting savings available to customers; misrepresenting special or limited offers; misrepresenting merchandise as free; and failing to maintain adequate records.

Appearances

For the Commission: *Anne L. Draznin.*

For the respondents: *Merrill Freed, D'Ancona, Pflaum, Wyatt & Rikind,* Chicago, Ill.

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 Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., and Stevens Bolingbrook Bedding, Inc., corporations, and Norton Baran, as an officer and stockholder of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., Stevens Bolingbrook Bedding, Inc., are corporations

organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their principal office and place of business located at 4435 S. Oakley Ave., in the City of Chicago, State of Illinois. Respondent Norton Baran is an officer and stockholder of said corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of home furnishing products, including, but not limited to bedding, sleeper sofas, and related case and upholstered furniture, to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of advertisements by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements for said products by use of the United States mails, advertisements in newspapers of interstate circulation, advertisements in television and radio broadcasts of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

SUBSTANTIAL SAVINGS

* * * * * * *

TOTAL SELLOUT SAVE 28%-48% INCREDIBLE DISCOUNT PRICES

* * * * * * *

LAST 2 DAYS. END OF THE MONTH SALE. ANNUAL PRICE SHATTERING SALE YOU HAVE BEEN WAITING FOR. DRASTIC REDUCTIONS. TREMENDOUS REDUCTIONS.

* * * * * * *

NEVER BEFORE A SALE OF THIS TYPE ON NAME BRAND SLEEP PRODUCTS

* * * * * * *

MANUFACTURERS CLOSE OUT SALE OF THE YEAR. 4 DAYS ONLY. THESE PRICES CANNOT BE REPEATED AFTER REMAINING STOCKS ARE GONE

* * * * * * *

SUPER DISCOUNT WEEKEND SPECIAL. 3 DAYS ONLY

* * * * * * *

BRAND NAMES AT DISCOUNT PRICES AND YOU GET A BONUS

* * * * * * *

FREE 6 PIECE BEDDING PACKAGE WITH PURCHASE OF ADVERTISED $158 KING OR $98 QUEEN SIZE BEDDING

* * * * * * *

PAR. 5. By and through the use of the above quoted statements and representations and others of similar import and meaning, but not expressly set out herein, with respect to and for the purpose of inducing the purchase of their merchandise, respondents and their salesmen, agents and representatives have represented and are now representing directly or by implication, that:

1. Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.

2. Respondents' advertised offer is made for a limited time only.

3. Purchasers of respondents' merchandise would realize at least a stated minimum amount of savings from respondents' regular selling prices.

4. Purchasers of respondents' products would receive free gifts or bonuses with the purchase of respondents' advertised products.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. The prices advertised by respondents are the usual and customary purchase prices of the products.

2. Respondents' advertised offers are not made for a limited time only. Said merchandise is advertised regularly at the represented prices and on the terms and conditions therein stated.

3. Purchasers of respondents' merchandise do not realize stated minimum amounts of savings over the price at which said merchandise has been sold at retail by the respondents in their recent, regular course of business. The stated percentage of savings constitutes an implied comparison between the manufacturers' suggested retail prices

for such merchandise and respondents' usual and customary selling prices.

4. Purchasers of respondents' products do not receive free gifts or bonuses with their purchases of advertised home furnishings and bedding products.

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

PAR. 7. The use by respondents of the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said home furnishings and bedding products offered by respondents by reason of said erroneous and mistaken beliefs.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of home furnishings, bedding products and service of the same general kind and nature as those sold by respondents.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., and Stevens Bolingbrook Bedding, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Illinois with their executive offices and warehouse located at 4435 S. Oakley Ave., Chicago, Ill.

Respondent, Norton Baran, is an officer and stockholder of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., Stevens Bolingbrook Bedding, Inc., their successors and assigns, and officers, and Norton Baran, as an officer and stockholder of said corporations and as an officer and stockholder of any other corporation which would stand in the same or a substantially similar relationship in operating, structure and business relationship to the

named corporate respondents and to him as the respondents do to each other at the date of service of this order and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with advertising, offering for sale, sale or distribution of home furnishings and bedding products or any other products or merchandise advertised, sold or offered for sale or distribution in conjunction therewith in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Using the words "BUY NOW AND SAVE," "DRASTIC REDUCTIONS," "SUPER DISCOUNT WEEKEND SPECIAL," or any other words of similar import not specifically set forth herein, which represent, directly or indirectly, orally or in writing, that any savings are afforded the public in the purchase of merchandise from respondents at respondents' advertised price unless the price of such merchandise being sold or offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Representing, directly or indirectly, orally or in writing, that stated minimum amounts of savings are afforded the public in the purchase of merchandise from the respondents at respondents' advertised price, unless, in fact, the price at which merchandise is offered constitutes, at least, the stated minimum amount of reduction from the price at which said merchandise has been usually and customarily sold at retail by the respondents in the recent, regular course of business.

3. Using the words "LAST 2 DAYS," "4 DAYS ONLY," "WEEKEND SPECIAL" or any other words of similar import not specifically set forth herein, which represent that the products advertised are available to the public at the terms, conditions, and prices advertised for a limited time only, when in fact, said products have been offered for sale or sold by respondents at terms, conditions, and prices similar to those stated in the advertisements at times other than those set forth therein in the recent, regular course of respondents' business.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or service advertised, sold, offered for sale or distributed by respondents is furnished "free" or at no cost to the purchaser, when, in fact, the cost of such "free" merchandise or service is directly or indirectly included in the selling price of respondent's products that are

advertised, sold, offered for sale or distributed to the purchaser in conjunction with said "free" merchandise or service.

5. Representing, directly or indirectly, orally or in writing, that any merchandise or service is being offered as a "gift," "without charge," "bonus," or other words or terms which tend to convey the impression to the public that the merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

6. Failing to maintain and produce for inspection or copying for a period of three (3) years adequate records:

(a) Which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 1, 2 and 3 of this order are based, and

(b) From which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 4 and 5 of this order can be determined.

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

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

It is further ordered, That during the period from the date of service of this order to the expiration of 10 years from such date:

(a) respondents promptly notify the Commission within five (5) business days of the dissolution of a named corporate respondent which does not result in the emergence of a successor corporation or of the creation by incorporation, of a new retail outlet which would stand in the same or a substantially similar relationship in operation, structure and business relationship to the named corporate and individual respondents as the respondents do to each other at the date of service of this order, and

(b) respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, with the exception of those changes enumerated in (a) above, 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 corporate respondents which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF

STEREO EQUIPMENT SALES, INC. T/A BALTIMORE STEREO WHOLESALERS, ETC., ET AL.

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

Docket C-2740. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Timonium, Md., mail-order seller of stereo equipment and components, and related merchandise, among other things to cease soliciting prepaid orders if respondent cannot ship ordered merchandise within a stated time period; failing to make refunds; failing to maintain records; failing to disclose the shipping weight of merchandise; and misrepresenting any of their divisions as wholesalers.

Appearances

For the Commission: *Alan L. Cohen* and *Thomas J. Keary*.

For the respondents: *H. George Schweitzer, Heffelfinger, Schweitzer & Rabil*, Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Stereo Equipment Sales, Inc., a corporation, doing business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters, and Benjamine Shumate, 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 Stereo Equipment Sales, 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 located at 7A Aylesbury Rd., Timonium, Md. Such

corporation does business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of stereo equipment and components and other related merchandise to the public by mail order and through retail outlets.

PAR. 3. In the course and conduct of their business, respondents are causing, and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business located in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their mail order business, as aforesaid, respondents offer merchandise for sale by means of advertisements, brochures, flyers, catalogs, letters, and oral representations by telephone. In connection with their aforesaid business and for the purpose of inducing the purchase of their said merchandise, respondents have made, and are now making, certain statements and representations with respect to delivery and the promptness with which orders will be filled.

Typical and illustrative of said statements and representations, but not all inclusive thereof, is the following:

UPON RECEIPT OF YOUR ORDER AT STEREO WHOLESALERS IT IS ASSIGNED AN ORDER NUMBER AND PROCESSED THROUGH OUR MAIL ORDER DEPARTMENT WHERE PRICING IS VERIFIED AND THE AVAILABILITY OF THE EQUIPMENT IS CHECKED. YOU ARE NOTIFIED AT THAT TIME AS TO THE SHIPPING STATUS OF YOUR ORDER. THE ORDER THEN GOES TO THE SHIPPING DEPT. WHERE IT IS NORMALLY SHIPPED WITHIN THREE WORKING DAYS.

IF YOUR REQUEST SHOULD NOT BE IN STOCK, NO SUBSTITUTIONS WILL BE MADE WITHOUT YOUR APPROVAL. WE WILL WRITE TO SEE IF YOU WISH A SUBSTITUTION OR A REFUND.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five hereof, and others of similar import and meaning but not expressly set forth herein, and by the offering of merchandise for sale, respondents have represented, and are now representing, directly or by implication, that:

1. merchandise ordered and prepaid will be delivered within a reasonable period of time after receipt of a purchaser's order; and

2. if the merchandise ordered by a purchaser is not in stock, the purchaser will be so notified and will be sent a notice asking whether the purchaser wants a substitution or a refund.

PAR. 7. In truth and in fact:

1. Respondents, in many instances, have not and are not now shipping merchandise within a reasonable period of time after receipt of a purchaser's prepaid order. Respondents, in many instances, ship merchandise many weeks after receipt of a purchaser's order.

2. When ordered merchandise is not in stock, respondents, in many instances, have not notified purchasers and offered such purchasers substitutions or refunds.

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

PAR. 8. In the further course and conduct of their mail order business and for the purpose of inducing the purchase of their said merchandise, respondents have distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. The purchaser, if he wishes to completely prepay his order, is required to calculate the postage or shipping charges based on the weight of the merchandise offered, using the postage and shipping rate charts provided. However, the advertisements, brochures, flyers, catalogs, letters and other material soliciting orders do not indicate the weight of the merchandise offered.

Consequently, in many instances, purchasers have paid respondents more for postage or shipping than the actual postage or shipping charges incurred by respondents in mailing or shipping the merchandise, and said purchasers have not received from respondents a refund for their overpayments. Therefore, the failure of respondents to disclose the weights of their merchandise, and their failure to make refunds of postage or shipping overpayments, was and is unfair, misleading and deceptive.

PAR. 9. By and through the use of the trade name "Baltimore Stereo Wholesalers" and "Stereo Wholesalers" separately and in conjunction with statements appearing in their advertisements, brochures, flyers, catalogs, letters, or other material soliciting orders, respondents have

represented and do represent, directly or by implication, that they are wholesalers and that their prices are wholesale prices and that in each instance the savings afforded to their purchasers is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 10. In truth and in fact, respondents are not wholesalers with respect to many of the articles offered for sale and sold by them, nor do they offer to sell, or sell, many of their articles of merchandise at wholesale prices but, to the contrary, the prices of many of such articles are in excess of the prices usually and customarily paid by retailers. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

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

PAR. 11. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondents' products, and overpayment of postage or shipping charges, by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of 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 respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Stereo Equipment Sales, 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 located at 7A Aylesbury Rd., Timonium, Md. Such corporation does business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters.

Respondent Benjamine Shumate is an individual and 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 respondent, and the proceeding is in the public interest.

ORDER

A

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

(1) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(2) "Receipt of payment" shall be deemed to be, (1) at the time respondents receive the order with payment enclosed either in cash or by check or (2) at the time respondents charge a purchaser's account for a credit order.

(3) "Prompt refund" shall mean a return of the full amount remitted by the purchaser or the crediting of the purchaser's account for the full indebtedness incurred for the unshipped merchandise within seven (7) working days of the date on which the purchaser's right to refund vests under the provisions of this order. Refunds shall be deemed made when one of the following is mailed to the purchaser by first class mail:

(a) cash, money order or check; or

(b) if respondents are the creditor, a copy of the credit memorandum which removes the charge from the purchaser's account; or

(c) the actual charge or sales document which would create an obligation by the purchaser to a third party creditor; or

(d) a copy of the appropriate credit memorandum to the third party creditor which will remove the charge from the purchaser's account.

B

It is ordered, That respondents Stereo Equipment Sales, Inc., a corporation, doing business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters, or under any name or names, and its officers, and Benjamine Shumate, individually and as an officer of said corporation, and respondents' representatives, agents, employees, successors and assigns directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of stereo equipment and components and other merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Soliciting orders for the sale of merchandise to be ordered by the purchaser through the mail on a prepaid basis, unless such merchandise is shipped within that time clearly and conspicuously stated in such solicitation or, if no time is stated, within thirty (30) days after receipt of payment and a properly completed order from the purchaser.

2. Failing to make, without prior demand, a prompt refund to the purchaser of all moneys received for merchandise solicited on a prepaid basis and ordered through the mails when the merchandise is not shipped:

(a) Within that time clearly and conspicuously stated in the solicitation to which the purchaser responded as the time in which shipment will be made, or

(b) If no time is stated, within thirty (30) days of receipt of the purchaser's payment by respondents.

Provided, however, That the inhibitions of Paragraph B(1) shall not apply if the provisions of Paragraph B(2) are complied with; *and, Provided, further*, That Paragraph B(1) and Paragraph B(2) shall not apply under the following circumstances: where respondents, due to circumstances beyond their control, are unable to make shipment as required in Paragraph B(1) and respondents send to the purchaser a notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. The notice shall be sent by first class mail and accompanied by a self-

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addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the expiration of the thirty (30) day period, or that time stated in the solicitation. The notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, respondents receive a response from the purchaser requesting a refund, such refund shall be promptly made.

If no response is received from the purchaser and respondents do not ship the merchandise within the estimated date of shipment given in the above notice, and for each subsequent time respondents do not ship merchandise by the estimated date of shipment to which a purchaser has agreed, respondents must send to the purchaser an additional notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. This additional notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the estimated date of shipment given in the previous notice. This additional notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, respondents receive a response from the purchaser requesting a refund, such refund shall be promptly made.

Provided, further, however, That Paragraphs B(1) and B(2) shall not apply to any advertisement which:

(1) does not contain an order blank or other similar means to order merchandise from respondents;

(2) does not make any representation concerning the speed or promptness with which respondents ship merchandise to its customers; and

(3) does not offer specific items for sale at specified prices.

3. Failing to:

(a) Maintain a record of each complaint alleging failure to ship merchandise solicited and ordered on a prepaid basis, or of failure to make refund within the applicable period of time, as specified in Paragraphs B(1) and B(2) of this order, and the disposition of each such complaint. Such record shall be kept for a period of at least eighteen (18) months following the disposition of such complaint;

(b) Maintain records showing the employment of systems and procedures designed to comply with Paragraphs B(1) and B(2) of this order.

4. Failing to disclose, in any brochures, flyers, catalogs, letters, oral representations or other solicitations of orders which provide the purchaser with the means to order merchandise from respondents, the shipping weight of any of the items of merchandise offered.

5. Failing to promptly refund any postage or shipping payments made by a purchaser which are in excess of the postage or shipping charges incurred by respondents in mailing or shipping the merchandise to the purchaser; *Provided, however,* That respondents may charge a flat percentage of the order price for postage or shipping and handling if that fact is clearly and conspicuously disclosed, orally or in writing, to prospective purchasers before they order merchandise from respondents.

6. Representing, directly or by implication, in any advertisements, brochures, flyers, catalogs, letters or any other material soliciting orders, or in any of respondents' places of business open to the public, or otherwise representing, directly or by implication, that respondents or any of their divisions are wholesalers, or that they or their divisions sell articles of merchandise at wholesale prices, unless respondents, or the division referred to, in fact:

(a) make a substantial number of their sales to retailers in the ordinary course of business, and

(b) sell items which they offer at wholesale at prices which do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply, when purchased in the quantity offered for sale by respondents.

Provided, further, however, That respondents shall be permitted to phase out the use of the word "Wholesalers" in their trade name:

(a) in all advertisements, brochures, flyers, catalogs or any other material soliciting orders within six (6) months from the date this order is finally accepted;

(b) in all stationery, invoices and other business forms (and in-store promotional material) as the current supply is exhausted, but no later than six (6) months from the date this order is finally accepted; and

(c) in all store signs within eight (8) months from the date this order is finally accepted.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees or other persons engaged in the preparation and placing of respondents' advertisements, brochures, flyers, catalogs, letters or other material soliciting orders, and the offering for sale, or sale, of respondents' products, and secure from each such employee or other person a signed statement acknowledging receipt of said order.

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the

emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

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

IN THE MATTER OF

WARDS COMPANY, INC. T/A DIXIE HI-FIDELITY WHOLESALERS, ETC.

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

Docket C-2741. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Richmond, Va., mail-order seller of stereo equipment and components, and related merchandise, among other things to cease soliciting prepaid orders if respondent cannot ship ordered merchandise within a specified time period; failing to make refunds; failing to maintain records; failing to disclose handling and insurance costs; and misrepresenting any of its operating divisions as wholesalers.

Appearances

For the Commission: *Alan L. Cohen* and *Thomas J. Keary*.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Wards Company, Inc., a corporation, doing business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi, hereinafter sometimes referred to as respondent, has 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 Wards Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 5021 Brook Rd., Richmond, Va. Such corporation does business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi.

Par. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of stereo equipment and components and other related merchandise to the public by mail order and through retail outlets.

PAR. 3. In the course and conduct of its business, respondent is causing, and for some time last past has caused, said merchandise, when sold, to be shipped from its place of business located in the Commonwealth of Virginia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 5. In the course and conduct of its mail order business, as aforesaid, respondent offers merchandise for sale by means of advertisements, brochures, flyers, catalogs, letters, and oral representations by telephone. In connection with its aforesaid business and for the purpose of inducing the purchase of its said merchandise, respondent has made, and is now making, certain statements and representations with respect to delivery and the promptness with which orders will be filled.

Typical and illustrative of said statements and representations, but not all inclusive thereof, is the following:

DIXIE, one of the largest stereo wholesalers, fills all your orders promptly.

We stock every item in this catalog and your order will be shipped promptly and insured.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five hereof, and others of similar import and meaning but not expressly set forth herein, and by the offering of merchandise for sale, respondent has represented, and is now representing, directly or by implication, that merchandise ordered and

prepaid will be delivered within a reasonable period of time after receipt of a purchaser's order.

PAR. 7. In truth and in fact, respondent, in many instances, has not and is not now shipping merchandise within a reasonable period of time after receipt of a purchaser's prepaid order. Respondent, in many instances, ships merchandise many weeks after receipt of a purchaser's order.

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

PAR. 8. In the further course and conduct of its mail order business and for the purpose of inducing the purchase of its said merchandise, respondent has distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. The purchaser, if he wishes to completely prepay his order, is required to calculate the postage or shipping charges based on the weight of the merchandise offered. However, the advertisements, brochures, flyers, catalogs, letters and other material soliciting orders do not provide the customer with postage or shipping rate charts.

Consequently, in many instances, purchasers have paid respondent more for postage or shipping than the actual postage or shipping charges incurred by respondent in mailing or shipping the merchandise, and said purchasers have not received from respondent a refund for their overpayments. Therefore, the failure of respondent to make refunds of postage or shipping overpayments, was and is unfair, misleading and deceptive.

PAR. 9. In the further course and conduct of its mail order business and for the purpose of inducing the purchase of its said merchandise, respondent has distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. These materials do not disclose that handling or insurance costs will be charged to purchasers ordering from respondent, although such costs are regularly charged to the purchaser. Therefore, the failure of respondent to disclose the handling and insurance costs was, and is unfair, misleading and deceptive.

PAR. 10. By and through the use of the trade name Dixie Hi-Fidelity Wholesalers, and in conjunction with statements appearing in its advertisements, brochures, flyers, catalogs, letters, or other material soliciting orders, respondent has represented and does represent, directly or by implication, that it is a wholesaler and that its prices are wholesale prices and that in each instance the savings afforded to its purchasers is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 11. In truth and in fact, respondent is not a wholesaler with respect to many of the articles offered for sale and sold by it, nor does it offer to sell, or sell, many of its articles of merchandise at wholesale prices but, to the contrary, the prices of many of such articles are in excess of the prices usually and customarily paid by retailers. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

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

PAR. 12. The use by respondent of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and its failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondent's products, and overpayment of postage or shipping charges, by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid 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 and deceptive acts and practices in or affecting commerce in violation of Section 5 of 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; and

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

The Commission having thereafter considered the matter and having

determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Wards Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 5021 Brook Rd., Richmond, Va. Such corporation does business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi.

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

A

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

(1) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(2) "Receipt of payment" shall be deemed to be, (1) at the time respondent receives the order with payment enclosed either in cash or by check or (2) at the time respondent charges a purchaser's account for a credit order.

(3) "Prompt refund" shall mean a return of the full amount remitted by the purchaser or the crediting of the purchaser's account for the full indebtedness incurred for the unshipped merchandise within seven (7) working days of the date on which the purchaser's right to refund vests under the provisions of this order. Refunds shall be deemed made when one of the following is mailed to the purchaser by first class mail:

(a) cash, money order or check; or

(b) if respondent is the creditor, a copy of the credit memorandum which removes the charge from the purchaser's account; or

(c) the actual charge or sales document which would create an obligation by the purchaser to a third party creditor; or

(d) copy of the appropriate credit memorandum to the third party creditor which will remove the charge from the purchaser's account.

B

It is ordered, That respondent Wards Company, Inc., a corporation,

doing business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi, or under any name or names, and its officers, and respondent's representatives, agents, employees, successors and assigns directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of stereo equipment and components and other merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Soliciting orders for the sale of merchandise to be ordered by the purchaser through the mail on a prepaid basis, unless such merchandise is shipped within that time clearly and conspicuously stated in such solicitation or, if no time is stated, within thirty (30) days after receipt of payment and a properly completed order from the purchaser.

2. Failing to make, without prior demand, a prompt refund to the purchaser of all moneys received for merchandise solicited on a prepaid basis and ordered through the mails when the merchandise is not shipped:

(a) Within that time clearly and conspicuously stated in the solicitation to which the purchaser responded as the time in which shipment will be made, or

(b) If no time is stated, within thirty (30) days of receipt of the purchaser's payment by respondent.

Provided, however, That the inhibitions of Paragraph B(1) shall not apply if the provisions of Paragraph B(2) are complied with; *and, Provided further,* That Paragraph B(1) and Paragraph B(2) shall not apply under the following circumstances: where respondent, due to circumstances beyond its control, is unable to make shipment as required in Paragraph B(1) and respondent sends to the purchaser a notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. The notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the expiration of the thirty (30) day period, or that time stated in the solicitation. The notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, respondent receives a response from the purchaser requesting a refund, such refund shall be promptly made.

If no response is received from the purchaser and respondent does not ship the merchandise within the estimated date of shipment given in the above notice, and for each subsequent time respondent does not ship merchandise by the estimated date of shipment to which a purchaser has agreed, respondent must send to the purchaser an

additional notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. This additional notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the estimated date of shipment given in the previous notice. This additional notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, the respondent receives a response from the purchaser requesting a refund, such refund shall be promptly made.

Provided further, however, That Paragraphs B(1) and B(2) shall not apply to any advertisement which:

(1) does not contain an order blank or other similar means to order merchandise from respondent;

(2) does not make any representation concerning the speed or promptness with which respondent ships merchandise to its customers; and

(3) does not offer specific items for sale at specified prices.

Provided further, however, That should the Federal Trade Commission promulgate a trade regulation rule or industry guide concerning Undelivered Mail Order Merchandise and Services, containing provisions comparable to, but less comprehensive or less restrictive than, the provisions of this order, nothing herein shall preclude respondent from exercising its right to petition for appropriate modification of this order under Section 3.72 or any other pertinent provision of the Commission's Rules of Practice or of law.

3. Failing to:

(a) Maintain a record of each complaint alleging failure to ship merchandise solicited and ordered on a prepaid basis, or of failure to make refund within the applicable period of time, as specified in Paragraphs B(1) and B(2) of this order, and the disposition of each such complaint. Such record shall be kept for a period of at least eighteen (18), months following the disposition of such complaint;

(b) Maintain records showing the employment of systems and procedures designed to comply with Paragraphs B(1) and B(2) of this order.

4. Failing to promptly refund any postage or shipping payments made by a purchaser which are in excess of the postage or shipping charges incurred by respondent in mailing or shipping the merchandise to the purchaser; *Provided, however,* That respondent may charge a flat percentage of the order price for postage or shipping and handling if that fact is clearly and conspicuously disclosed, orally or in writing, to

prospective purchasers before they order merchandise from respondent.

5. Failing to clearly and conspicuously disclose, orally or in writing, to prospective purchasers before they order merchandise from respondent, the actual handling and insurance costs which will be charged to the purchaser.

6. Representing, directly or by implication, in any advertisements, brochures, flyers, catalogs, letters or any other material soliciting orders, or in any of respondent's places of business open to the public, or otherwise representing, directly or by implication, that respondent or any of its divisions is a wholesaler, or that it or its division sells articles of merchandise at wholesale prices, unless respondent, or the division referred to, in fact:

(a) makes a substantial number of its sales to retailers in the ordinary course of business, and

(b) sells items which it offers at wholesale at prices which do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply, when purchased in the quantity offered for sale by respondent.

Provided, further, however, That respondent shall be permitted to phase out the use of the word "Wholesalers" in its trade name:

(a) in all advertisements, brochures, flyers, catalogs or any other material soliciting orders within six (6) months from the date this order is finally accepted;

(b) in all stationery, invoices and other business forms (and in-store promotional material) as the current supply is exhausted, but no later than six (6) months from the date this order is finally accepted; and

(c) in all store signs within eight (8) months from the date this order is finally accepted.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future employees or other persons engaged in the preparation and placing of respondent's advertisements, brochures, flyers, catalogs, letters or other material soliciting orders, and the offering for sale, or sale, of respondent's products, and secure from each such employee or other person a signed statement acknowledging receipt of said order.

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

It is further ordered, That 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 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 they have complied with this order.

IN THE MATTER OF

CONSOLIDATED INTERNATIONAL TOOL & OIL, INC., ET AL.

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

Docket C-2742. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Rockford, Ill., seller of distributorships for automotive products, tools, electrical products, recording tapes, and other products, among other things to cease making unsubstantiated earnings claims, false claims concerning the quality and quantity of locations and products they will provide distributors, and connections or arrangements with nationally advertised corporations. Further, respondents must notify prospective customers that their contracts are not final and binding until a distributor is satisfied with his account locations and has been supplied with sufficient products for his displays.

Appearances

For the Commission: *James F. Drzewiecki.*

For the respondents: *Patrick H. Sreenan*, Rockford, Ill.

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 Consolidated International Tool & Oil, Inc., a corporation, Globe Marketing & Services, Inc., a corporation, and Joseph La Franka, individually and as an officer of said corporations, and also doing business as Consolidated Distributing Co., 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 Consolidated International Tool & Oil,

Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Globe Marketing & Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Joseph La Franka is an individual and officer of respondent corporations and also does business as Consolidated Distributing Co. He formulates, directs and controls the acts and practices of said business entities including the acts and practices hereinafter set forth. His address is 1211 Florist Dr., Rockford, Ill.

PAR. 2. Respondents are now, and for some time have been engaged in the advertising, offering for sale, sale and distribution of distributorships for automotive products, tools, electrical products, recording tapes and various other products to distributors. These products are purchased by distributors for resale to the public.

PAR. 3. In the course and conduct of their business, respondents for some time have caused, their said products to be shipped from their place of business in the State of Illinois to distributors located in various other States of the United States, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Respondents insert advertisements in newspapers, soliciting persons to become distributors for respondent corporations. Typical and illustrative but not all inclusive of the statements and representations made in newspapers and various promotional materials are the following:

Excellent opportunity for additional Part-Time Income of $6,000 to $8,000 or, a Full-Time Income of $15,000 or more.

EARNINGS UP TO:

$800 per month part-time
$2,000 per month full-time

NO SELLING

100% MONEY BACK GUARANTEE

WE OFFER: Pre-established accounts Complete training Full Company Support Defined territory Continued Support and Assistance Guaranteed Investment

Secured investment: $6,500

This is an excellent opportunity for persons who qualify.

* * * * * * *

IMPORTANT TO INSTALL IMMEDIATELY Install all of your displays immediately after your locations have been secured. Don't put it off. Do it IMMEDIATELY!
INITIAL DISPLAY LOADING Be certain all displays are fully loaded for immediate use by the consumer.

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

1. A person can expect to earn between $500 and $800 or more per month by devoting part time to his distributorship, and that he can expect to earn between $1250 and $2000 or more per month by devoting full time to his distributorship.

2. There is no selling required of a distributor.

3. Respondents guarantee to return the entire investment to a distributor if he is not satisfied with the distributorship.

4. All account locations assigned to a distributor have been established by respondents prior to signing of a contract by distributor.

5. Respondents offer complete training to distributor.

6. Respondents offer distributor continuing support and assistance in making his distributorship a success.

7. Distributor is assigned a defined and exclusive territory in which all of his accounts will be established and in which no other distributor for respondent may operate.

8. Respondents guarantee distributor's investment against loss.

9. Respondents are selective with regard to persons qualified to become distributors.

10. Respondents will provide distributor with products for his displays on a timely basis.

PAR. 6. In truth and in fact:

1. A person cannot expect to earn between $500 and $800 or more per month by devoting part time to his distributorship, nor can he expect to earn between $1250 and $2000 or more per month by devoting full time to his distributorship. Such earnings claims are greatly in excess of the profit that will accrue in a great majority of cases no matter how much time is devoted to the distributorship.

2. Selling is required of a distributor if profitable locations are to be obtained.

3. Respondents have never returned the entire investment to a distributor who is not satisfied with the distributorship.

4. Account locations assigned to a distributor have not been established by respondents prior to signing of a contract by distributor. In a majority of cases respondents have not established account locations until after the distributor has signed a contract.

5. Respondents do not offer distributor complete training. The only

training given is in the form of general suggestions in a "Distributor Operating Manual."

6. Respondents have failed in some instances to support and assist distributor in making his distributorship a success.

7. Though respondents may purport to assign a distributor a defined and exclusive territory, frequently his assigned accounts are outside this territory; territorial boundaries overlap and distributors are not assigned exclusive territories.

8. Respondents in no way guarantee a distributor's investment against loss.

9. Respondents are not selective with regard to persons qualified to become distributors. The only requirement for becoming a distributor is the price of the initial investment.

10. Respondents do not provide distributor with products for his displays on a timely basis.

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

PAR. 7. In the further course and conduct of their business as aforesaid, and in furtherance of their purpose of inducing the purchase of their distributorships, respondents direct various newspapers to print advertisements containing corporate logos of STP Corporation, the BernzOmatic Corporation, General Electric Company and Superscope, Inc. The use of these logos in newspaper advertising and on other printed matter disseminated by respondents represents, directly or by implication, that respondents are closely affiliated with the said corporations.

In fact, respondents are not closely affiliated, nor are they affiliated in any way, with the said corporations. Rather, the relationship between respondents and the said corporations is basically that of buyer and seller.

Therefore, the acts and practices set forth above were, and are, false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to advertisements to contact respondents' sales representatives. For the purpose of inducing the sale of distributorships offered by respondents, said sales representatives make to prospective distributors many statements and representations, directly or by implication, regarding opportunities available to distributors and assistance given to distributors by respondents. Among and typical, but not all inclusive, of such statements and representations are the following:

1. A distributor will earn between $12,000 and $30,000 or more per year.

2. A distributor can expect an average sale of a certain specified amount of merchandise per day.

3. A distributor can recover his initial investment within one year.

4. Accounts will be set up by respondents in profitable sales producing locations.

5. All accounts will be within the certain radius of distributor's home stipulated in distributor's contract.

6. Accounts will be in an exclusive territory where no other distributor for respondent may operate.

7. Respondents will set up 20 separate physical account locations for distributor.

8. Accounts will be set up shortly after distributor signs his contract.

9. A distributor will be able to sell STP products for less than the price charged by retail stores in his area.

10. Respondents would at some undetermined future time become the sole STP dealer in the distributor's area.

11. A distributor would have exclusive dealership for STP products in his territory.

12. A distributor will receive original parts tune-up kits from respondents.

13. A distributor will be supplied with a great variety of products exhibited to him by respondents.

14. A distributor will have 90 days to pay for all products ordered from respondents.

15. Respondents will pay freight costs for shipment of products to distributor.

PAR. 9. In truth and in fact:

1. Few, if any, distributors have earned more than $12,000 per year.

2. A distributor cannot expect an average sale of a certain specified amount of merchandise per day.

3. Few, if any, of respondents' distributors have recovered their initial investment within one year.

4. Accounts are not set up by respondents in profitable sales producing locations. They are usually set up in marginal places of business.

5. Accounts are often located outside the certain radius of distributor's home stipulated in distributor's contract.

6. Accounts are often not in an exclusive territory where no other distributor for respondent may operate. Territories often overlap with more than one distributor sharing a territory or even a single location.

7. Respondents do not set up 20 separate physical account locations for distributor. Often respondents count each display rack in one physical location as a single account.

8. Accounts are not set up shortly after distributor signs his contract. Often there are protracted delays by respondents in setting up accounts.

9. A distributor is seldom able to sell STP products for less than the price charged by retail stores in his area.

10. Respondents never were, nor ever had the opportunity to become, sole STP dealers in any area. Thus there was no possibility that all STP products sold in any area would be sold through respondents' distributors.

11. A distributor never had, nor is he likely to ever have, exclusive dealership for STP products in his territory.

12. A distributor does not receive original parts tune-up kits from respondents.

13. A distributor is not supplied with the great variety of products exhibited to him by respondents.

14. A distributor does not have 90 days to pay for all products ordered from respondents. He must pay cash when ordering.

15. Respondents do not pay freight costs for shipment of products to distributor. Distributor must pay these costs himself.

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

PAR. 10. In the further course and conduct of their business as aforesaid, and in furtherance of their purpose of inducing the purchase of their distributorships, respondents' sales representatives give prospective distributors the names and addresses of alleged "successful distributors" for respondents. Respondents' sales representatives tell prospective distributors to contact these "successful distributors." For the purpose of inducing the sale of distributorships offered by respondents, such "successful distributors" make to prospective distributors many statements and representations, directly or by implication, regarding opportunities available to purchasers of distributorships. Among and typical, but not all inclusive, of such statements and representations are that:

1. They are distributors for respondents.

2. They are extremely successful, earning $25,000 or more per year as distributors for respondents.

PAR. 11. In truth and in fact:

1. They are not, and never have been, distributors for respondents.

2. They are not extremely successful, and do not earn $25,000 or more per year as distributors for respondents.

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

PAR. 12. By directing prospective distributors to such "successful distributors," respondents are furthering and abetting the deception of the public in the manner and as to the things hereinbefore alleged.

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of similar distributorships.

PAR. 14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said distributorships offered by respondents by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Consolidated International Tool & Oil, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Globe Marketing & Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Joseph La Franka is an individual and an officer of said corporations, and also does business as Consolidated Distributing Co. He formulates, directs and controls the policies, acts and practices of said business entities and his address is 1211 Florist Dr., Rockford, Ill.

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

ORDER

It is ordered, That respondents Consolidated International Tool & Oil, Inc., a corporation, Globe Marketing & Services, Inc., a corporation, their successors and assigns, and officers and Joseph La Franka, individually and as an officer of said corporations and doing business as Consolidated Distributing Co., 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 distributorships for automotive products, tools, electrical products, recording tapes and any other products to distributors for resale to the public, or in connection with any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that:

a. Distributors of respondents' products can or will derive any stated amount of sales, income, gross or net profits, unless:

1. Such sales, income or profits are reasonably likely to be achieved by the person to whom the representation is made;

2. The basis and assumptions for such representation are set forth in detail;

3. Such representation and the underlying data have been prepared in accordance with generally accepted accounting principles;

4. In immediate conjunction therewith, the following statement is clearly and conspicuously disclosed: "THERE IS NO ASSURANCE THAT INCOME AND PROFIT PROJECTIONS WILL BE ATTAINED BY ANY SPECIFIC DISTRIBUTOR. THEY ARE MERELY ESTIMATES." and,

5. The amounts represented are not in excess of sales, income or profits actually achieved by existing distributors; and where distributors have not been in operation long enough to indicate what sales, income or profits may result, making any representation of such to a prospective distributor.

6. Respondents maintain adequate records (a) which disclose the facts upon which any claims of the type discussed in Paragraph a. of this order are based; and (b) from which the validity of any claim of the type discussed in Paragraph a. of this order can be determined.

b. Persons investing in respondents' distributorships are assured of profitable income from the distributorships.

c. Persons investing in respondents' distributorships can expect an average sale of a certain specified amount of merchandise per day, or any other period of time, unless in fact the average number of sales represented is that of a substantial number of distributors.

d. Selling is not required of distributors in order to profitably operate a distributorship.

e. A distributor's entire investment, or any portion thereof, will be returned if he is not satisfied with the distributorship.

f. Account locations assigned to a distributor have been established prior to signing of a contract by distributor.

g. Persons investing in respondents' distributorships will receive complete training enabling them to become self-sufficient distributors, unless complete details of the training are explained to a prospective distributor prior to his signing of a contract.

h. Respondents will provide a distributor full and continuing support and assistance in making his distributorship a success.

i. Persons investing in respondents' distributorships will be granted an exclusive territory in which to sell products purchased from respondents, and in which no other distributor for respondents may operate.

j. All accounts established for a distributor will be within a certain radius of distributor's home.

k. A distributor's investment in respondents' distributorship is guaranteed in any way against loss.

l. Any criteria other than the ability to provide the price of initial investment are used in the selection of respondents' distributors.

m. Respondents will provide distributors with products for their displays on a timely basis.

n. Respondents are in any way affiliated with any firm whose products they merely resell; or misrepresenting in any way their status with or relation to any other business organization or product.

o. Persons investing in respondents' distributorships will receive the return of their investment within any specified period of time.

p. Respondents will obtain profitable sales producing account locations for their distributors; or misrepresenting in any way the type of business establishment or premises in which account locations will be established.

q. Any certain number of accounts will be established by respondents, unless in fact this number corresponds with the actual number of physical account locations finally established by respondents.

r. Respondents will set up accounts for distributor shortly after distributor signs his contract.

s. A distributor will be able to sell any product sold to him by respondents for less than the price charged by others selling the same product at the same distributive level in the distributor's trade area.

t. Respondents are, or will become, sole dealers, franchisees or distributors of any product in any area.

u. A distributor will be the exclusive dealer or distributor in his area for any product sold by respondents.

v. A distributor will receive from respondents any products other than those which respondents in fact will make available to distributor.

w. Terms of payment for products supplied to distributors by respondents are anything other than cash.

x. Respondents will pay freight costs for shipment of products to distributors.

y. Any person is a distributor, employee, representative or agent of respondents unless in fact that person actually holds the position he is represented to hold.

It is further ordered, That respondents make the following disclosures to all prospective purchasers of their distributorships:

1. State in writing in all contracts and purchase agreements:

a. That the contract or purchase agreement is not final and binding until respondents have completely performed their obligations thereunder by establishing account locations satisfactory to the purchaser, and by providing the purchaser with sufficient inventory to fill his initial displays.

b. That full refund of a prospective purchaser's investment will be

made at any time during the period described in Paragraph 1(a) above, upon written request from the prospective purchaser.

It is further ordered, That respondents furnish each prospective purchaser of respondents' distributorships with a copy of the completed contract or purchase agreement proposed to be used at least fifteen (15) business days prior to the date the agreement is to be consummated.

It is further ordered, That respondents:

a. Distribute a copy of this order to each of their operating divisions.

b. Deliver a copy of this order to all prospective purchasers of respondents' products, services or distributorships at least fifteen (15) days prior to the signing of a contract or purchase agreement, and secure from each such prospective purchaser a signed statement acknowledging receipt of said order.

c. Deliver a copy of this order to all present and future salesmen or other persons engaged in the sale of respondents' products, services or distributorships, and require that each of these said persons sign a statement clearly stating his intention to be bound by and to conform to the requirements of this order; retain said statement during the period said person is employed or engaged; and make said statements available to the Commission's staff for inspection and copying upon request.

d. Institute a program of continuing surveillance adequate to reveal whether each person described in subparagraph (c) of this paragraph is conforming to the requirements of this order.

e. Discontinue dealing with or terminate the use or engagement of any person who refuses to sign a statement as described in subparagraph (c) of this paragraph, or who continues on his own any act or practice prohibited by this order.

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

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

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

IN THE MATTER OF

SAVOY DRUG & CHEMICAL COMPANY

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

Docket C-2743. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Chicago, Ill., seller and distributor of Let's Lift It, a skin preparation, among other things to cease making false or unsubstantiated performance and effectiveness claims for any product; and misrepresenting tests or test results.

Appearances

For the Commission: *Mark A. Heller* and *Jean F. Greene.*

For the respondent: *Halbert O. Crews, Greenberg, Keele, Lunn & Aronberg*, Chicago, Ill. and *William R. Pendergast, McMurray & Pendergast*, Wash., D.C.

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 Savoy Drug and Chemical Co., a corporation, hereinafter referred to as respondent, has 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 this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Savoy Drug and Chemical Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 427 W. Randolph St., Chicago, Ill.

PAR. 2. Respondent is now, and for some time past has been, engaged in the advertising, offering for sale, sale and distribution of a skin preparation known as Let's Lift It.

PAR. 3. In the course and conduct of its aforesaid business, respondent now causes, and for some time last past has caused its said

skin preparation, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintains and at all times mentioned herein, has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertising concerning its said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its aforesaid business, respondent has made numerous statements and representations in magazines and elsewhere with respect to the ability of its product to produce unblemished skin. Typical and illustrative of the statements and representations contained in said advertising and promotional material, but not all-inclusive thereof, are the following:

15 Minute Skin Cleaning Miracle Drys Acne Pimples and Lifts Out Blackheads On Nose, Face, Chin and Neck.

* * * * * * *

Makes Skin Smoother, Clearer, Lighter and Younger Looking . . . Even Without Make-up * * * Works Wonders on Your Skin or Your Money Back.

* * * * * * *

A Cosmetic Chemist's Experiments With Extracts From Natural Herbs and Plants May be the Best News Yet for the Horrid Acne Pimples and the Ugly Blackheads that makes Faces Look Blemished.

* * * * * * *

We call it a miracle and it works in only 15 minutes. Even without make-up your skin keeps that naturally healthy looking glow of youth for days and with regular use as necessary your lovelier complexion can be almost perpetual.

* * * * * * *

Let's Lift It, as this amazing new herbal skin beautifying discovery is called, it's not a cover-up * * * not a cream * * * not a lotion * * * and it works its wonders the natural herb way without make-up of any kind. You just smooth it on and let it set very quickly. Your skin actually feels a fast pick up as the unusual deep down action exercises the skin,

firms tissue, makes sagging muscles tingle. Then in 15 minutes you actually see it rinse away blackheads, dry acne pimples and clarify sallow, muddy, sluggish looking skin.

* * * * * * *

Dark circles, shadows and muddy spots lighten visibly. Enlarged pores are refined and look smaller. Excess skin oiliness around the nose no longer shines. Even without make-up skin seems to acquire the clean, smooth texture * * * the bright clearer tone * * * the glow of youth appearance that's every woman's dream.

* * * * * * *

You have nothing to lose but the pimples, blackheads and wrinkles you don't want anyway.

PAR. 6. By and through the use of said statements and representations, respondent has represented, directly or by implication, that:

1. Let's Lift It will clear all blackheads, acne pimples and wrinkles from the skin of each individual who uses it;

2. Let's Lift It substantially lightens dark circles, shadows, and muddy spots on the skin of each individual who uses it;

3. Let's Lift It permanently refines and reduces enlarged pores in the skin of every individual who uses it;

4. Let's Lift It permanently tightens sagging skin under the eyes, and at the mouth and jawline on every individual who uses it;

5. Tests or experiments which prove the representations numbered 1 through 4 above have been conducted.

PAR. 7. In truth and in fact:

1. Let's Lift It will not clear all blackheads, acne pimples, and wrinkles from the skin of each individual who uses it;

2. Let's Lift It will not substantially lighten dark circles, shadows, and muddy spots on the skin of each individual who uses it;

3. Let's Lift It will not permanently refine and reduce enlarged pores in the skin of every individual who uses it;

4. Let's Lift It will not permanently tighten sagging skin under the eyes, and at the mouth and jawline on every individual who uses it;

5. Tests or experiments which prove the representations numbered 1 through 4 above have not been conducted.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms, and individuals in the sale of skin preparations.

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

quantities of respondent's skin preparation by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the 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 commerce, and unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such 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, 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 enter the following order:

1. Respondent Savoy Drug & Chemical Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 427 W. Randolph St., Chicago, Ill.

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

ORDER

It is ordered, That respondent Savoy Drug & Chemical Company, a corporation, and its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of skin preparations or any other product in, or affecting, commerce as "commerce" is defined in the Federal Trade Commission Act, to forthwith cease and desist from:

A. Representing directly or by implication that any such product:

1. Treats or alleviates the conditions that produce blemishes or wrinkles, or produces skin that is free of acne, pimples, or blackheads, or will cause skin blemishes or wrinkles to be lifted away, removed, or eliminated;

2. Removes or eliminates dark circles, shadows, or muddy spots;

3. Refines or reduces large pores, or tightens sagging skin;

4. Has any therapeutic quality, characteristic, or capacity, or will have any result, or will perform in any given manner, or is effective for any purpose, unless each such quality, characteristic, capacity, result, manner of performance, or effectiveness has been fully substantiated.

B. Disseminating or causing the dissemination of any advertising by United States mails or by any means in, or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents, directly or by implication:

1. The performance, efficacy, capacity, or usefulness, or any characteristic, property, quality, or the result of use of any such product;

2. The extent to which any such product has been tested, or the results of its use demonstrated.

C. Disseminating or causing the dissemination of any advertising by any means, for the purpose of inducing or which is likely to induce, directly or by implication, the purchase of any such product in, or having an effect upon, commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations, acts, or practices prohibited in Paragraphs A or B above.

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

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

It is further ordered, That respondent shall within sixty (60) days after the effective date of the order served upon it, file with the Commission a report, in writing, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

EMANUELE VITALE, ET AL. T/A EXPORT-IMPORT WOOLENS CO.

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

Docket C-2744. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a New York City importer and distributor of wool products, among other things to cease falsely and deceptively labeling wool products as to wool content.

Appearances

For the Commission: *Jerry R. McDonald.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Emanuele Vitale and Samuel Vitale, individually and as co-partners trading and doing business as Export-Import Woolens Co., hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Emanuele Vitale and Samuel Vitale are individuals and are co-partners trading and doing business as Export-Import Woolens Co., with their office and principal place of business located at 1290 Avenue of the Americas, New York, N.Y.

Respondents are engaged in the importation, distribution and sale of wool products including but not limited to wool fabrics.

PAR. 2. Respondents, now and for some time last past, have imported

for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were fabrics which were stamped, tagged, labeled, or otherwise identified by respondents as containing "65% polyester and 35% wool," whereas, in truth and in fact, said wool products contained substantially different amounts of fibers than as represented.

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

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

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respect:

Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in violation of Rule 22 of the aforesaid rules and regulations.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Emanuele Vitale and Samuel Vitale are individuals and are co-partners trading and doing business as Export-Import Woolens Co., with their principal office and place of business located at 1290 Avenue of the Americas, New York, N.Y.

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

ORDER

It is ordered, That respondents Emanuele Vitale and Samuel Vitale, individually and as co-partners trading and doing business as Export-Import Woolens Co. or under any name or names, their successors and assigns, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the importation for introduction or the introduction into commerce or the offering for sale, sale, transporta-

tion, distribution, delivery for shipment, or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Failing to securely affix labels to samples, swatches or specimens of wool fiber products, used to promote or effect the sale of such wool fiber products, showing in words and figures plainly legible all the information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act.

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

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

IN THE MATTER OF

E. S. INTERNATIONAL CORP., ET AL.

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

Docket C-2745. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a New York City importer and distributor of fabrics including wool and wool blend products, among other things to cease falsely and deceptively labeling and invoicing wool products as to wool content and to notify those that purchased these fabrics that they were misbranded.

Appearances

For the Commission: *Jerry R. McDonald* and *Joel R. Eidelsberg.*

For the respondents: *David Paget, Winer, Neuburger & Sive,* New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that E. S. International Corp., a corporation, and Saleh Ezra Sassoon, also known as Charles Sassoon, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. S. International Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 485 Fifth Ave., New York, N.Y.

Individual respondent Saleh Ezra Sassoon, also known as Charles Sassoon, is an officer of E. S. International Corp. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents are engaged in the importation and sale of fabrics including but not limited to wool products.

PAR. 2. Respondents, now and for some time past, have imported for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain wool fabrics stamped, tagged, labeled, or otherwise identified by respondents as 50 percent wool, 50 percent polyester; 50 percent

wool, 45 percent polyester, 5 percent airon; and 50 percent wool, 50 percent man-made fibers whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PAR. 6. Respondents are now and for some time past have been engaged in the importation, offering for sale, sale, and distribution of certain products, namely fabrics. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents in the course and conduct of their business have made statements on invoices to their customers misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as 50 percent wool, 50 percent polyester; 50 percent wool, 45 percent polyester, 5 percent airon; and 50 percent wool, 50 percent man-made fibers whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 8. The acts and practices set out in Paragraph Seven have the

tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged in Paragraph Seven were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent E.S. International Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 485 Fifth Ave., New York, N.Y.

Respondent Saleh Ezra Sassoon, also known as Charles Sassoon, is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation and his address is the same as that of said corporation.

Respondents are engaged in the importation and sale of fabrics including but not limited to wool products.

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

ORDER

It is ordered, That respondents E.S. International Corp., a corporation, its successors and assigns, and its officers, and Saleh Ezra Sassoon, also known as Charles Sassoon, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, or importing for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That respondents E.S. International Corp., a corporation, its successors and assigns, and its officers, and Saleh Ezra Sassoon, also known as Charles Sassoon, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the importing, advertising, offering for sale, sale or distribution of fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

It is further ordered, That respondents mail a copy of this order by registered mail to each of their customers that purchased the wool products which gave rise to this complaint.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and his affiliation with a new business or employment. Such notice shall include respondents' current business

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

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

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

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

IN THE MATTER OF

MITSUI & CO. (U.S.A.), INC.

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

Docket C-2746. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a New York City importer and seller of fabrics including but not limited to wool products, among other things to cease falsely or deceptively misbranding or mislabeling its wool products and to notify those who purchased the misbranded wool products of the fact that they were misbranded.

Appearances

For the Commission: *Judith K. Braun.*

For the respondent: *Joseph Barbash, Debevoise, Plimpton, Lyons & Gates*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mitsui & Co. (U.S.A.), Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and

the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mitsui & Co. (U.S.A.), Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 200 Park Ave., New York, N.Y.

Respondent is engaged in the importation and sale of fabrics including but not limited to wool products.

PAR. 2. Respondent, now and for some time past, has imported for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain wool fabrics stamped, tagged, labeled, or otherwise identified by respondent as "70% polyester, 30% reprocessed wool," whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. The acts and practices of respondent as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and

now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under 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 New York 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 Wool Products Labeling Act of 1939; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mitsui & Co. (U.S.A.), Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 200 Park Ave., New York, N.Y.

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

ORDER

It is ordered, That respondent Mitsui & Co. (U.S.A.), Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any

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

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

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

It is further ordered, That respondent deliver a copy of this order by registered mail to each of its customers that purchased "THEO" fabrics from it during the period from Jan. 1, 1973 to the effective date of this order.

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

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

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

IN THE MATTER OF

YAMAHA INTERNATIONAL CORPORATION, ET AL.

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

Docket C-2747. Complaint, Oct. 23, 1975-Decision, Oct. 23, 1975

Consent order requiring a Buena Park, Calif., motorcycle manufacturer and its San Francisco, Calif., advertising agency, among other things to cease making unsubstantiated claims of motorcycle safety. Further, respondent is required to transmit to participants in its "Learn-to-Ride" program a letter reflecting the fact that contrary to popular opinion, riding a motorcycle weighing only several

hundred pounds is not as safe as operating an automobile weighing one to two tons, regardless of the training a cyclist has had.

Appearances

For the Commission: *Dean A. Fournier.*

For the respondents: *Lawrence P.J. Bonaguidi* and *William D. Greene, Burns, Van Kirk, Green & Kafer,* New York City.

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 Yamaha International Corporation, a corporation, and Botsford Ketchum Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Yamaha International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6600 Orangethorpe Ave., Buena Park, Calif.

PAR. 2. Respondent Botsford Ketchum Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 55 Union St., San Francisco, Calif.

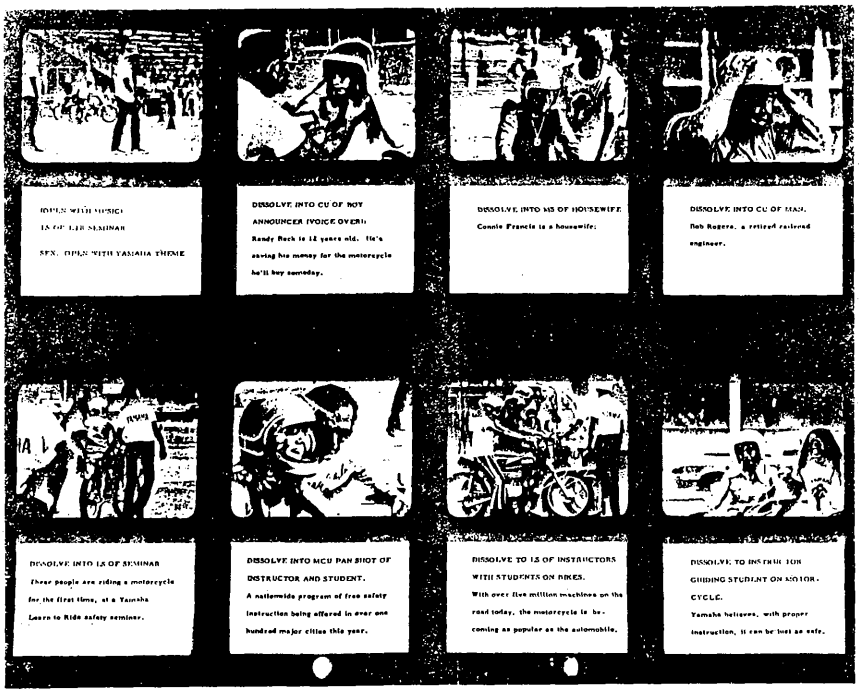
PAR. 3. Respondent Yamaha International Corporation is now, and for some time last past has been, engaged in the sale and distribution of Yamaha motorcycles, snowmobiles, and other products.

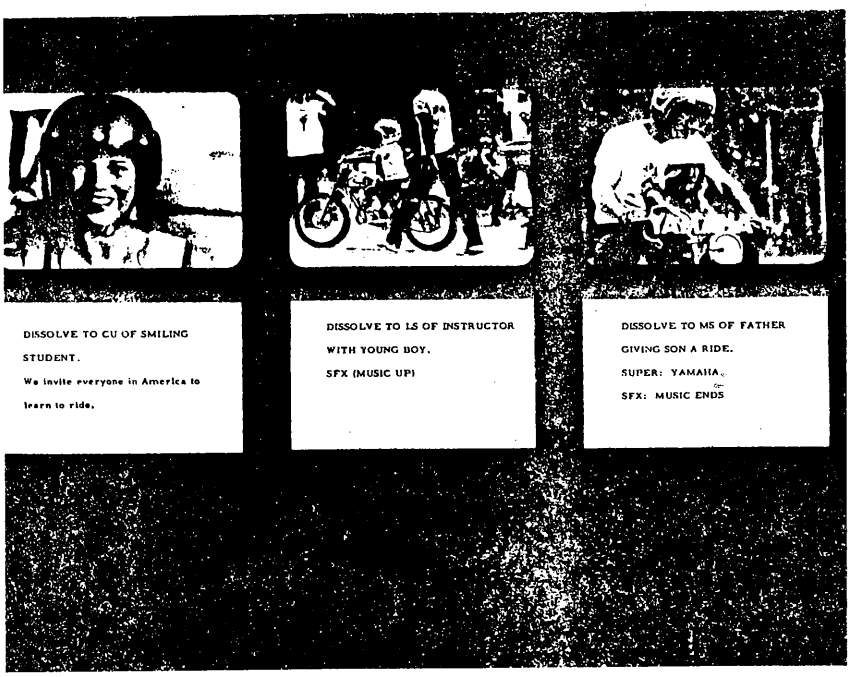
PAR. 4. Respondent Botsford Ketchum Inc. is now and for some time last past has been the advertising agency of Yamaha International Corporation, and now and for some time last past has prepared and placed for publication and caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of Yamaha products.

PAR. 5. In the course and conduct of its business as aforesaid, respondent Yamaha International Corporation causes its said motorcycles, snowmobiles, and other products, when sold, to be transported from its place of business in California to purchasers located in various other States of the United States and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their said businesses, and for the purpose of inducing the sale of said Yamaha products, respondents have disseminated and caused the dissemination of advertisements concerning said products by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in magazines and newspapers, and network and local television and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across State lines.

PAR. 7. Among the advertisements disseminated as hereinabove set forth was a television commercial, presented in connection with Yamaha's Learn-To-Ride safety seminars during the year 1973, with the following audio and video storyboard:


DISSOLVE INTO CU OF BOY ANNOUNCER (VOICE OVER): Randy Rock is 12 years old. He's saving his money for the motorcycle he'll buy someday.
DISSOLVE INTO MS OF HOUSEWIFE. Connie Francis is a housewife;
DISSOLVE INTO CU OF MAN. Bob Rogers, a retired railroad engineer.
DISSOLVE INTO LS OF SEMINAR These people are riding a motorcycle for the first time, at a Yamaha Learn to Ride safety seminar.
DISSOLVE INTO MCU PAN SHOT OF INSTRUCTOR AND STUDENT. A nationwide program of free safety instruction being offered in over one hundred major cities this year.
DISSOLVE TO LS OF INSTRUCTORS WITH STUDENTS ON BIKES. With over five million machines on the road today, the motorcycle is becoming as popular as the automobile.
DISSOLVE TO INSTRUCTOR GIVING STUDENT ON MOTORCYCLE. Yamaha believes, with proper instruction, it can be just as safe.


DISSOLVE TO CU OF SMILING
STUDENT.
We invite everyone in America to
learn to ride.
DISSOLVE TO LS OF INSTRUCTOR
WITH YOUNG BOY.
SFX (MUSIC UP)
DISSOLVE TO MS OF FATHER
GIVING SON A RIDE.
SUPER: YAMAHA.
SFX: MUSIC ENDS

PAR. 8. Through the use of said television commercial, respondents have represented, directly or by implication, that, with proper instruction, motorcycles can be operated as safely as automobiles.

PAR. 9. In truth and in fact, motorcycles cannot be operated as safely as automobiles. Reliable statistics show that the incidence of death and serious injury from accidents is significantly and substantially greater among motorcycle operators than among drivers of automobiles. Therefore, the representation set forth in Paragraphs Seven and Eight hereof was, and is, false, misleading and deceptive.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive representation has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the purchase of Yamaha motorcycles under the erroneous and mistaken belief that such representation is true.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Yamaha International Corporation has been, and is now, in substantial competition, in or affecting commerce, with corporations, firms, and individuals in the sale of products of the same general kind and nature as those sold by said respondent.

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

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in 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.

DECISION AND ORDER

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

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered comments filed 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:

A. Respondent Yamaha International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6600 Orangethorpe Ave., Buena Park, Calif.

Respondent Botsford Ketchum Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 55 Union St., San Francisco, Calif.

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

ORDER

It is ordered, That respondents Yamaha International Corporation, a corporation, and Botsford Ketchum Inc., a corporation, and their officers, agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of motorized vehicles or other products as specified below, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing orally, visually, in writing, or in any other manner, directly or by implication, that any motorized vehicle other than an automobile can be operated as safely as an automobile, unless respondents have a reasonable basis for such representation at the time it is made, including documentation of competent and reliable scientific tests or other objective data of statistical validity.

B. Making any claims or statements orally, visually, in writing, or in any other manner, directly or by implication, as to the safety of any

transportation device or vehicle, unless respondents have a reasonable basis for such claim or statement at the time it is made, which may consist of documentation of competent and reliable scientific tests or other objective data of statistical validity.

Provided, however, That mere visual depiction of a product, device or vehicle in operation, without more, shall not be deemed a representation, claim or statement as to safety within the meaning of the above Paragraphs A and B.

It is further ordered, That respondent Yamaha International Corporation shall, not later than sixty (60) days after service upon it of this order, send a letter in the form annexed hereto as Letter "A" to each person known to have participated in any way in a Yamaha Learn-To-Ride seminar during the year 1973. Mailing by first class mail to the last known address of each such person shall comply with this requirement.

It is further ordered, That respondents maintain complete business records relative to the manner and form of their compliance with this order. Respondents shall retain each such record for at least three years, and shall retain substantiation and other documentation at least two years beyond the last dissemination of any representation, claim, or statement contingent thereon under the provisions of this order. Upon reasonable notice, respondents shall make any and all such records available for inspection and photocopying by authorized representatives of the Federal Trade Commission at respondents' place of business or other properly designated location.

It is further ordered, That respondents forthwith distribute a copy of this order to each of their operating divisions, and to all personnel now or hereafter engaged in any aspect of the preparation, creation or placing of advertising of transportation devices or vehicles.

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

It is further ordered, That respondents shall, within 60 days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

LETTER A

YAMAHA INTERNATIONAL CORPORATION

Dear Learn-To-Ride Participant:

A recent survey financed by our corporation revealed that a considerable number of the persons who attended our Learn-To-Ride program believe that, with proper instruction, they can be just as safe riding a motorcycle as in an automobile.

As one of the leading vendors of motorcycles in the United States, and because of our concern for the safety of all motorcycle owners and riders, we feel it is important to correct this erroneous and potentially hazardous belief. Although the motorcycle's maneuverability helps in avoiding accidents, and training can certainly help make you a safer rider, all presently available statistics show a substantially higher likelihood of accidental death or serious injury for the motorcyclist than for the automobile driver.

In other words: No matter how thorough your training, in the event you become involved in an accident you will be less safe from injury while riding a two-wheel vehicle weighing several hundred pounds than when riding in an enclosed four-wheel vehicle of one to two tons.

We believe that by making this fact clear to all who participated in our Learn-To-Ride program, we can contribute to their future safety as motorcycle operators.

IN THE MATTER OF

TEAC CORPORATION OF AMERICA

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

Docket C-2752. Complaint, Oct. 24, 1975-Decision, Oct. 24, 1975

Consent order requiring a Montebello, Calif., supplier of high fidelity audio components, among other things to cease fixing resale prices of its products; fair trading its products for five years; suggesting resale prices for two years; withholding earned advertising allowances from, or refusing to sell to, price-cutting dealers; requiring dealers to report price-cutters; and imposing customer restrictions upon dealers.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg.*

For the respondent: *David B. Schulman, Prince, Schoenberg, Fisher, Newman & Schulman,* Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, (15 U.S.C. § 45), and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent TEAC Corporation of America is a

corporation organized under the laws of the State of California, with its principal office located at 7733 Telegraph Rd., Montebello, Calif.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers. In fiscal year 1974, the gross sales of the respondent were in excess of $25 million.

PAR. 3. Respondent distributes and sells its products to retail dealers (hereinafter referred to as dealers) located in all fifty States and the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain suggested retail prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed;

(c) requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers;

(d) soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices;

(e) directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the retail prices suggested or established by respondent; or (2) sells respondent's products to other dealers in high fidelity audio components;

(f) threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested retail prices, or who advertise respondent's products at retail prices below the prices established by respondent or who supply respondent's products to other dealers; and

(g) regularly furnishing dealers with price lists and supplements thereto containing established or suggested retail prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York 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 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jursidictional findings, and enters the following order:

1. Respondent TEAC Corporation of America, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 7733 Telegraph Rd., Montebello, Calif.

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

ORDER

I

It is ordered, That respondent TEAC Corporation of America, a corporation, its successors and assigns, and respondent's employees, agents, representatives, including sales representatives, or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity

audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling, or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *Provided, however,* That subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any TEAC dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person

or firm who does not adhere to any resale price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

In connection with the foregoing provisions under Part I of this order; *It is further provided*, That after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to establish and distribute resale prices for its products under fair trade laws then in effect.

II

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since Jan. 1, 1972 and to every person or company that within three (3) years becomes a new dealer.

2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.

3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents, sales representatives, and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent

shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.

4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violations.

5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement, upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from Jan. 1, 1972 to the effective date of this order, unless respondent can establish that the applicant does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products at retail, and forthwith reinstate any such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

III

It is further ordered, That respondent:

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

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

IV

It is further ordered, That in the event the Commission issues any order which is less restrictive than the provisions of Paragraphs I, II,

or III of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of TEAC Corporation of America reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

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.

IN THE MATTER OF

SHERWOOD ELECTRONIC LABORATORIES, INC.

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

Docket C-2753. Complaint, Oct. 24, 1975-Decision, Oct. 24, 1975

Consent order requiring a Chicago, Ill., supplier of high fidelity audio components, among other things to cease fixing resale prices of its products; fair trading its products for five years; suggesting resale prices for two years; withholding earned advertising allowances from, or refusing to sell to, price-cutting dealers; requiring dealers to report price-cutters; and imposing customer restrictions upon dealers.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg.*
For the respondent: *Donald Mackay, Sidley & Austin,* Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, (15 U.S.C. §45), and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Sherwood Electronic Laboratories, Inc. is a corporation organized under the laws of the State of Illinois, with its principal office located at 4300 N. California Ave., Chicago, Ill.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers. In fiscal year 1973, the gross sales of the respondent were in excess of $12 million.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia and Puerto Rico, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain suggested retail prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed;

(c) requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers;

(d) soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices;

(e) directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the retail prices suggested or established by respondent; or (2) sells respondent's products to other dealers in high fidelity audio components;

(f) threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested retail prices, or who advertise respondent's products at retail prices below the prices established by respondent or who supply respondent's products to other dealers; and

(g) regularly furnishing dealers with price lists and supplements thereto containing established or suggested retail prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption

hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York 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 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sherwood Electronic Laboratories, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 4300 N. California Ave., Chicago, Ill.

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

ORDER

I

It is ordered, That respondent Sherwood Electronic Laboratories, Inc., a corporation, its successors and assigns, and respondent's employees, agents, representatives, including sales representatives or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements,

understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *Provided, however*, That subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the retail price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale or retail price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying ship-

ments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

In connection with the foregoing provisions under Part I of this order; *It is further provided*, That after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to distribute and establish resale prices for its products under fair trade laws then in effect.

II

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since Jan. 1, 1972 and to every person or firm that within three (3) years from the effective date hereof becomes a new dealer.

2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.

3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents and sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.

4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order

and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violation.

5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from Jan. 1, 1972 to the effective date of this order unless respondent can establish that the dealer terminated does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products, and forthwith reinstate any such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

III

It is further ordered, That respondent:

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

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

IV

It is further ordered, That in the event the Commission issues any order which is less restrictive than the provisions of Paragraphs I, II, or III of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of Sherwood Electronic

Laboratories, Inc., reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

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.

IN THE MATTER OF

SANSUI ELECTRONICS CORPORATION

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

Docket C-2754. Complaint, Oct. 24, 1975–Decision, Oct. 24, 1975

Consent order requiring a Woodside, N.Y., supplier of high fidelity audio components, among other things to cease fixing resale prices of its products; fair trading its products for five years; suggesting resale prices for two years; withholding earned advertising allowances from, or refusing to sell to, price-cutting dealers; requiring dealers to report price-cutters; and imposing customer restrictions upon dealers.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg.*

For the respondent: *Harold E. Horowitz,* New York City, and *John D. Swartz, Pollak, Swartz, Stark & Armon,* New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, (15 U.S.C. §45), and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Sansui Electronics Corporation is a corporation organized under the laws of the State of New York, with its principal office located at 55-11 Queens Blvd., Woodside, N.Y.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these

products to retail dealers. In fiscal year 1974, the gross sales of the respondent were in excess of $25 million.

PAR. 3. Respondent distributes and sells its products to retail dealers (hereinafter referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain suggested retail prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealers who (1) advertises, offers to sell or sells respondent's products at prices below the retail prices suggested or established by respondent; or (2) sells respondent's products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested retail prices, or who advertise respondent's products at retail prices below the prices established by respondent or who supply respondent's products to other dealers; and

(g) Regularly furnishing dealers with price lists and supplements thereto containing established or suggested retail prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York 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 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sansui Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 55-11 Queens Blvd., Woodside, N.Y.

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

ORDER

I

It is ordered, That respondent Sansui Electronics Corporation, a corporation, its successors and assigns, and respondent's agents, representatives, including sales representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect

of fixing, establishing, maintaining, stabilizing or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling, maintaining or stabilizing the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *Provided, however,* That subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such

products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

In connection with the foregoing provisions under Part I of this order; *It is further provided*, That after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to establish and distribute resale prices for its products under fair trade laws then in effect.

II

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since Jan. 1, 1972 and to every new dealer for a period of three (3) years.

2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.

3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents, sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.

4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violations.

5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written

offer of reinstatement, upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled, who was terminated by respondent from Jan. 1, 1972 to the effective date of this order, unless respondent can establish that the applicant does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products at retail, and forthwith reinstate any such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

III

It is further ordered, That respondent:

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

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

IV

It is further ordered, That in the event the Commission issues any order which is less restrictive than the provisions of Paragraphs I, II, or III of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of Sansui Electronics Corporation reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

IN THE MATTER OF

U.S. PIONEER ELECTRONICS CORP.

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

Docket C-2755. Complaint, Oct. 24, 1975-Decision, Oct. 24, 1975

Consent order requiring a Moonachie, N.J., supplier of high fidelity audio components, among other things to cease fixing resale prices of its products and limiting customers with whom its dealers may deal; fair trading its products for five years; suggesting resale prices for two years; withholding earned advertising allowances from, or refusing to sell to, price-cutting dealers; requiring dealers to report price-cutters; and imposing customer restrictions upon dealers.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg.*

For the respondent: *William A. Fenwick* and *Edwin N. Lowe, Davis, Stafford, Kellman & Fenwick,* Palo Alto, Calif.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, (15 U.S.C. §45), and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent U.S. Pioneer Electronics Corp. is a corporation organized under the laws of the State of New York, with its principal office located at 75 Oxford Dr., Moonachie, N.J.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers. In fiscal year 1974, the gross sales of the respondent were in excess of $80 million.

PAR. 3. Respondent distributes and sells its products to retail dealers (hereinafter referred to as dealers) in the continental United States through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are

manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the suggested retail prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the retail prices suggested or established by respondent; or (2) sells respondent's products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested retail prices, or who advertise respondent's products at retail prices below the prices

established by respondent or who supply respondent's products to other dealers; and

(g) Regularly furnishing dealers with price lists and supplements thereto containing established or suggested retail prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York 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 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent U.S. Pioneer Electronics Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 75 Oxford Dr., Moonachie, N.J.

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

ORDER

I

It is ordered, That respondent U.S. Pioneer Electronics Corp., a corporation, its successors and assigns, and respondent's employees, agents, representatives, including sales representatives or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *Provided, however*, That subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously

stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the retail price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale or retail price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of

undertaking or engaging in any of the acts or practices prohibited by this order.

In connection with the foregoing provisions under Part I of this order, *It is further provided*, That after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to distribute and establish resale prices for its products under fair trade laws then in effect.

II

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since Jan. 1, 1972 and to every person or firm that within three (3) years from the effective date hereof becomes a new dealer.

2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.

3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents and sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.

4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violation.

5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from Jan. 1, 1972 to the effective date of this order unless respondent can establish that the dealer terminated does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products, and forthwith reinstate any such

distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

III

It is further ordered that respondent:

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

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

IV

It is further ordered, That in the event the Commission issues any order which is less restrictive than the provisions of Paragraphs I, II, or III of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of U.S. Pioneer Electronics Corp. reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

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.

IN THE MATTER OF

HASBRO INDUSTRIES, INC.

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

Docket C-2748. Complaint, Oct. 28, 1975-Decision, Oct. 28, 1975

Consent order requiring a Pawtucket, R.I., seller and distributor of toy, gift and hobby products, among other things to cease deceptively packaging its merchandise.

Appearances

For the Commission: *Pamela H. Feinstein* and *Larry B. Feinstein.*

For the respondent: *David Greene, Aberman, Greene and Locker,* New York City.

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 Hasbro Industries, Inc., a corporation, hereinafter referred to as respondent, has 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 Hasbro Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1027 Newport Ave., Pawtucket, R.I.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of hobby products, toy craft products and activity toys to jobbers and retailers to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, said products, when sold, to be shipped from its place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the products which are offered for sale and sold by

the respondent are a number of hobby products, toy craft products and activity toys. Through the use of certain methods of packaging, respondent has represented, and has placed in the hands of others the means and instrumentalities through which they might represent, directly or indirectly, that certain of the above products, as depicted or otherwise described on the exteriors of packages, corresponded in their lengths and widths, or their lengths, widths and thicknesses, with the boxes in which they were contained, and that others of such products were offered in quantities reasonably related to the size of the containers in which they were presented for sale.

PAR. 5. Typical and illustrative of said products as described in Paragraph Four, but not all inclusive thereof, are the following:

Spangle Beads
Indian Princess Bead Craft
Popeye Paint and Crayon Set
Embroidery
Round Knit
Foil Art
Crocheting

PAR. 6. In truth and in fact, such products often have not corresponded with their container or package dimensions and are often not offered in quantities reasonably related to the sizes of the containers or packages in which they are presented for sale. Purchasers of such a product are thereby given the mistaken impression that they are receiving a larger product or a product of greater volume than is actually the fact.

Therefore the methods of packaging referred to in Paragraph Four hereof were and are unfair and false, misleading and deceptive.

PAR. 7. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as the products sold by the respondent.

PAR. 8. The use by respondent of the aforesaid unfair, false, misleading and deceptive methods of packaging has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the quantum or amount of the product being sold was and is greater than the true such quantum or amount, and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the 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 and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it has reason to believe that the 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 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 Hasbro Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 1027 Newport Ave., Pawtucket, R.I.

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, That respondent Hasbro Industries, Inc., a corporation, and its officers, and respondent's agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary,

division or other device, in connection with the offering for sale, sale or distribution of hobby products, toy craft products and activity toys, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Packaging said products in oversized boxes or other containers so as to create the appearance or impression that the width or thickness or other dimensions or quantity of products contained in a box or container is appreciably greater than is the fact; but nothing in this order shall be construed as forbidding respondent to use oversized containers if respondent justifies the use of such containers as necessary for the efficient packaging of the products contained therein and establish that respondent has made all reasonable efforts to prevent any misleading appearance or impression from being created by such containers;

2. Providing wholesalers, retailers or other distributors of said products with any means or instrumentality with which to deceive the purchasing public in the manner described in Paragraph (1) above.

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

It is further ordered, That respondent distribute a copy of this order to all operating divisions and subsidiaries of said corporation.

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.

IN THE MATTER OF

HAIR REPLACEMENT RESEARCH CENTER, INC., ET AL.

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

Docket C-2749. Complaint, Oct. 28, 1975-Decision, Oct. 28, 1975

Consent order requiring a Bloomfield, N.J., seller of hairpieces, implant hair replacement services and related products to bald persons, among other things to cease making false and misleading claims with respect to their hair implant

process, and failing to disclose that their implant process involves surgical implantation of synthetic sutures which can cause pain, infection, scarring, and other disorders. Further, respondents are required to advise prospective customers to consult with a physician prior to contracting to undergo the process, and to provide customers a three-day cooling off period during which they may cancel their contract with full refund of their deposit.

Appearances

For the Commission: *Lester Grey.*
For the respondents: *Henry J. DiSabato*, Harrison, N.J.

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 Replacement Research Center, Inc., a corporation, trading also as Hair Replacement Research Consultants and Salvatore Saporito, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hair Replacement Research Center, Inc., trading also as Hair Replacement Research Consultants, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 72 Burroughs Place, Bloomfield, N.J.

Respondent Salvatore Saporito is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents operate the Hair Replacement Research Center salon and promote on their own behalf, among others, the implant hair replacement system hereinafter sometimes referred to as the "System." The system involves a surgical procedure whereby synthetic sutures (prolene) or similar synthetic thread are stitched into the scalps of respondents' customers. Hairpieces are then attached to the suture loops. Respondents sell, install and maintain the system, except that the surgical procedure itself is performed by a medical doctor.

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across State lines, and by mailing promotional

literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondent has maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and caused to be disseminated false advertisements by United States mails, within the meaning of Section 12 (a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the hair implant replacement system, respondents, directly have made numerous statements and representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

Without ever having to resort to toupees, hairpieces, * * *.

It's called implanting hair where none exists, making it a part of you.

* * * Thus enabling you to style it * * * Like your own hair again.

This revolutionary technique will assure the client complete success and happiness. Permanent hair in just 2 hours.

This exciting method of "implant" permits the client to swim under water, change hair styles and most important be able to once again scratch his or her own scalp as they did when they had their own hair.

The new implantation method requires no between visits for tightenings. You can really shampoo, swim, dive, ski, etc. * * * Like your own hair again. It can't come off * * *.

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning but not expressly set out herein, and by oral statements and representations made by employees and agents of the respondents, respondents have represented, directly or by implication, that:

1. The implant system does not involve wearing a hairpiece, or toupee.

2. The hairpiece applied becomes part of the anatomy like natural hair, and has characteristics of natural hair, including the following:

(a) The same appearance as natural hair upon normal observation and upon extreme close-up examination.

(b) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and mussing may be performed on it in the same manner as might a person with natural hair.

(c) The wearer may engage in physical activities with as much disregard for his hairpiece as might a person with natural hair.

3. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in

maintaining the system, and that the customer will not incur charges over and above the charge for installing the system.

PAR. 6. In truth and in fact:

1. The system does involve the wearing of a hairpiece or toupee.

2. The hairpiece applied does not become part of the anatomy like natural hair. The system involves the suturing of synthetic threads into the scalp of the recipient by a surgical procedure and which may be rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

(a) It does not have the same appearance as natural hair in a substantial number of instances. It is often discernible as a hairpiece or toupee upon normal observation, and upon extreme close-up examination.

(b) It cannot be cared for like regular hair but requires special care and handling. Strong pulling on the hair, such as may be expected to occur in washing, combing, brushing, and mussing, can cause pain because of the pressure exerted on the sutures in the scalp, may cause bleeding, and may cause the sutures to pull out. As a consequence, washing the hair and scalp is difficult. Because washing is difficult, foreign particles and dead skin tissue tend to accumulate beneath the implant hair application and become a significant source of irritation. The hair styles into which the hairpiece may be combed or brushed without professional treatments are limited.

(c) The wearer may not engage in physical activities with as much disregard for his hairpiece as might a person with natural hair. The wearer must at all times be careful that the hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

3. The wearer cannot in most instances care for the hairpiece himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgery or the continuing presence of synthetic thread in the scalp may require subsequent visits to a medical doctor. A substantial additional charge for such service could be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color-dyed, loss of dye through washing and normal wear; thus replacement hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have.

The statements and representations set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents,

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have represented in advertisements the asserted advantages of the system, as hereinbefore described. In many cases, respondents have represented their system to be painless and have not disclosed in such advertisements that a surgical procedure is a required step in the system. In no case have respondents' advertisements disclosed:

(a) that clients may experience discomfort and pain as a result of the surgical procedure, from the synthetic sutures themselves, and from pulling normally incident to wearing the hairpiece;

(b) that clients will be subject to the risk of irritation, infections, and skin diseases as a result of the surgical procedure and as a result of the synthetic sutures remaining in the scalp;

(c) that permanent scarring to the scalp may result from the required surgical procedures, and as a result of the synthetic sutures remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to rejection of the synthetic sutures through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said Paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of the system, respondents entice members of the purchasing public to their salon with advertisements of "* * * Like your own hair again, It can't come off" as a solution to baldness and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their salon. When members of the purchasing public have visited the salon, they have been subjected to emotional sales pressure, for the purpose of persuading them to sign a contract for the application of the implant system, and to make a substantial down payment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the synthetic suture in the scalp. Persons are insistently urged to sign such contracts and make such downpayments, through

the use of persistent and emotionally forceful sales presentations employing the following tactics, among others:

1. Representing that the psychological benefit of having hair replaced is so significant as to be of immediate necessity and that, subconsciously, bald men are desperate for prompt relief.

2. Inducing prospects to sign contracts and/or make downpayments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the synthetic suture being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are false and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, and to unfairly influence consumers to hurriedly and precipitately sign contracts for the application of the implant hair replacement system, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the synthetic suture in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of

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

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

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

1. Respondent Hair Replacement Research Center, Inc., trading also as Hair Replacement Research Consultants, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 72 Burroughs Place, Bloomfield, N.J.

Respondent Salvatore Saporito is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That respondent Hair Replacement Research Center, Inc., a corporation, trading also as Hair Replacement Research Consultants, and or under any other name or names, its successors and assigns and its officers, and Salvatore Saporito, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division

or other device or through franchisees or licensees, in connection with the advertising, offering for sale, sale, or distribution of the implant replacement system or other hair replacement product or process involving surgery (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication:

1. That the system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

2. That after the system has been applied, the hair applied becomes part of the anatomy like natural hair, and has the following characteristics of natural hair.

a. the same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;

b. it may be cared for like natural hair where care involves possible pulling on the hair;

c. the wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.

3. That after the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur maintenance costs over and above the cost of applying the system.

It is further ordered, That respondents, in advertising, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of synthetic sutures in the scalp, to which hair is affixed.

2. By virtue of the surgical procedure involving implantation of synthetic sutures in the scalp, and by virtue of the synthetic suture remaining in the scalp, there is a risk of discomfort, pain, infection, scarring, and other skin disorders.

3. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in subparagraph two of this paragraph, and such care may involve additional costs for medications and assistance.

4. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided*,

however, That in advertisements which consist of less than ten column inches in newspapers and periodicals, and in radio and television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements: Warning: This application involves surgery whereby synthetic sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents, in connection with the sale of the System, provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, subparagraphs one (1) through four (4) thereof, and that respondents require that, prior to executing any contract to purchase said system, such prospective purchasers, sign and date the disclosure sheet after the sentence, "I have read the foregoing disclosures and understand what they mean," and that Hair Replacement Research Center, Inc. provide a copy of said disclosure sheet to the customers and retain such signed disclosure sheet for at least three years.

It is further ordered, That, in connection with the sale of the system, no contract for application of the system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, serve a copy of this order upon each present and every future licensee or franchisee, and upon each physician participating in application of respondents' system, and obtain written acknowledgment of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing, (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this order. Respondents shall retain such acknowledgments and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' system.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, forthwith distribute a copy of this order to each of their operating divisions or departments.

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

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided*, That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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

It is further understood that nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or

exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

TAYLOR & KIMBROUGH REALTY COMPANY, ET AL.

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

Docket C-2750. Complaint, Oct. 28, 1975-Decision, Oct. 28, 1975

Consent order requiring a Memphis, Tenn., realty company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Truett M. Honeycutt.*
For the respondents: *William Bartholomew*, Memphis, Tenn.

COMPLAINT

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