

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders
IN THE MATTER OF

PEOPLES DRUG STORES, INC.

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

Docket C-2773. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring an Alexandria, Va., drugstore chain, among other things to cease making, carrying out, or enforcing anticompetitive shopping center lease agreements.

Appearances

For the Commission: *Eugene R. Webb, James D. Tangires, Jerry W. Boykin and Gary M. Laden.*

For the respondents: *Robert A. Hammond, III, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

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

(a) The terms "respondent" and "Peoples" refer to Peoples Drug Stores, Inc., a corporation, its subsidiaries, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets planned, developed and managed as a unit in relation to a trade area which the development is intended to serve, containing 200,000 square feet or more of floor area designed for retail occupancy and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of

retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "drug store" refers to an establishment engaged in the retail sale of prescription drugs and patent medicines and usually is designated by the trade as a drug store. A drug store may carry a number of other lines including, cosmetics, toiletries, tobacco and novelty merchandise, and may operate a soda fountain or lunch counter.

(e) The term "exclusive covenants" refers to terms in a lease which provide that respondent shall be or shall have the right to be, the only drug store in a shopping center.

(f) The term "rights of first refusal" refers to terms in a lease which provide that respondent shall have the unconditional right to reject or accept the opportunity to operate an additional drug store in a shopping center where respondent already operates a drug store.

PAR. 2. Respondent 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 6315 Bren Mar Dr., Alexandria, Virginia. Until October of 1974, respondent's principal place of business was located in the District of Columbia. Peoples is engaged in the operation of a chain of drug stores through wholly-owned subsidiaries, which are each named Peoples Service Drug Stores, Inc., except for a subsidiary in West Virginia which is named Peoples Drug Stores, Inc. These subsidiaries are each incorporated in one of the following States: Maryland, Virginia, Pennsylvania, North Carolina, West Virginia and Ohio.

PAR. 3. (a) In fiscal 1973, Peoples was one of the largest drugstore chains in the Eastern United States with sales in excess of \$241 million and 262 stores. Sites in shopping centers represent a substantial share of the company's total sales volume.

(b) In fiscal 1972, approximately fifty percent (50%) of Peoples' drug stores were located in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA). These stores accounted for approximately thirty percent (30%) of the drug store sales in the Washington, D.C. SMSA. Peoples operates drug stores in thirteen (13) of the largest shopping centers as well as a large number of other shopping centers in the Washington, D.C. SMSA. A substantial amount of Peoples retail sales in the Washington, D.C. SMSA are derived from shopping center stores.

PAR. 4. (a) In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases for resale a great variety of consumer products from a large number of suppliers located throughout the United States. Respondent causes these

products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments located in the District of Columbia, Virginia, West Virginia, Pennsylvania, North Carolina, Ohio and other States. Such products have been and are advertised and offered for sale by respondent in newspapers circulated among and between the several States of the Nation and the District of Columbia.

(b) In the course of establishing its stores in shopping centers in the District of Columbia and in the States of Virginia, Maryland, West Virginia, Pennsylvania, North Carolina and Ohio, respondent has negotiated and executed lease agreements with developers. In the course of negotiating and executing these leases, exchanges of information and communications have occurred between respondent in the District of Columbia and developers in other States. Respondent has also used the United States mails in enforcing or otherwise acting with respect to its lease rights.

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

PAR. 6. (a) In recent years, Peoples has entered into a substantial number of lease agreements with shopping center developers for the establishment of its drug stores in shopping centers. During the course of negotiating such leases, the developers have acceded to respondent's demands for exclusive covenants to protect it from actual and potential competition.

Typical and illustrative of said exclusive covenants, but not all-inclusive thereof, are the following:

Landlord covenants and agrees that it shall not permit any other Tenant or occupant in the shopping center to fill prescriptions or to operate a drug store during the term of this Lease and any renewal thereof, or to operate any store whose primary purpose is the sale of vitamins, or drugs, or medicinal items* * *. (a) Landlord covenants that it shall not permit any other tenant or occupant within the Shopping Center, or any expansion thereof, to fill prescriptions or operate a drugstore* * *. (b) In the event any other tenant or occupant in the Shopping Center * * * fills prescriptions or operates a drug store, the Landlord agrees to take forthwith all necessary legal steps to prevent such use, and upon failure to do so Tenant shall be entitled * * * to take such steps in the Landlord's name and at the Landlord's expense, and to deduct from rent thereafter accruing the Tenant's reasonable outlays and advances in so doing.

(b) In other shopping center leases with shopping center developers, developers have acceded to respondent's demands for restrictive

provisions which give Peoples "rights of first refusal" on placement of another drug store in those shopping centers, thereby protecting respondent from actual and potential competition.

Typical and illustrative of said "rights of first refusal," but not all-inclusive thereof, is the following:

If Landlord elects to lease additional premises in the shopping center building, * * * for the purpose of conducting therein the principal business of a retail drug store. (sic) Landlord shall offer such premises to Tenant upon the same terms and conditions as contained in a bona fide offer made by a third party which is acceptable to Landlord. Upon receipt of such offer from Landlord, Tenant shall have thirty (30) days within which to accept said offer and then to enter a written Lease Agreement* * *.

(c) Additional restrictive provisions in Peoples' leases with shopping center developers further control, limit and restrict the types of goods and services which may be offered for sale by other tenants already within a shopping center where Peoples is a tenant.

Typical and illustrative of said restrictive provisions, but not all-inclusive thereof, are the following:

* * * With respect to the area leased to F. W. Woolworth, Landlord shall be required only to obtain a covenant from Woolworth that it will not fill prescriptions.

* * * Penn Fruit Company — shall not trade under the name "drug store" nor fill drug prescriptions in the Camp Hill Shopping Center so long as Peoples Service Drug Stores, Inc. maintains and operates a drug store in the Camp Hill Shopping Center* * *.

(d) The aforesaid restrictions have been enforced or acted upon by respondent and/or others to respondent's benefit.

PAR. 7. The aforesaid lease provisions and the rights, powers and privileges thereby conferred on respondent as set forth in Paragraph Six, have had and continue to have the tendency to restrain trade and commerce. Included among the effects of such restraints are the following:

- (a) Excluding actual and potential competitors;
- (b) Restricting, hindering and coercing shopping center developers in their choice of potential tenants in shopping centers;
- (c) Restricting, hindering and coercing other tenants from selling certain products or offering certain services which are sold or offered by respondent; and
- (d) Denying the public the benefits of free competition.

PAR. 8. In the further course and conduct of its operation of drug stores in shopping centers, respondent has communicated with shopping center developers to effectuate the exclusion of other tenants from shopping centers who sell goods and services also sold by respondent. Respondent has also communicated with shopping center developers to preclude other tenants already doing business in

shopping centers in which respondent also operates a drug store, from selling some of the same goods and services also sold by respondent. Such communications have had and continue to have the tendency to exclude actual and potential competitors, restrict, hinder and coerce shopping center developers in their choice of potential tenants in shopping centers, restrict, hinder and coerce other tenants from selling or offering for sale certain products and services which are sold or offered for sale by respondent and deny the public the benefits of free competition.

PAR. 9. The aforesaid lease provisions, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished with a copy 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, its attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter 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 Peoples Drug Stores, 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 6315 Bren Mar Dr., Alexandria, Virginia.

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

ORDER

I

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

(a) The terms "respondent" and "Peoples" refer to Peoples Drug Stores, Inc., a corporation, its successors, assigns, subsidiaries, divisions and any other device, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets planned, developed and managed as a unit in relation to a trade area which the development is intended to serve, containing 200,000 square feet or more of floor area designed for retail occupancy and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "drugstore" refers to an establishment engaged in the retail sale of prescription drugs and patent medicines and usually is designated by the trade as a drugstore. A drugstore may carry a number of other lines including, cosmetics, toiletries, tobacco and novelty merchandise, and may operate a soda fountain or lunch counter.

(e) The term "rights of first refusal" refers to terms in a lease which provide that respondent shall have the unconditional right to reject or accept the opportunity to operate an additional drugstore in a shopping center where respondent already operates a drugstore.

II

It is ordered, That respondent directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

(1) gives respondent the right to be the only drugstore in a shopping center;

(2) gives respondent "rights of first refusal" in shopping centers;

(3) prohibits or in any manner controls the entrance of tenants into shopping centers;

1

Decision and Order

(4) controls or restricts the business operations of other tenants in shopping centers.

III

It is further ordered, That respondent shall:

A. distribute a copy of this order to each of its operating divisions and subsidiaries;

B. within thirty (30) days after service of this order upon respondent, notify each shopping center developer or landlord of shopping centers in which respondent operates a drugstore of this order by providing each such developer or landlord with a copy of this order by registered or certified mail;

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

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

IN THE MATTER OF
LINDAL CEDAR HOMES, INC., ET AL.

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

Docket C-2774. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring a Seattle, Wash., manufacturer and seller of pre-cut building packages and distributorships, among other things to cease making advertising claims without prior substantiation; using unfair contract terms; failing to provide consumers with right of rescission if timely delivery of product is not made; failing to provide warranties that their products will be delivered complete and free from defects in accordance with terms of the purchase contract; failing to make disclosures required by F.T.C.'s proposed Trade Regulation Rule on Sale of Franchises; and failing to comply with the disclosure requirements of Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *David R. Pender.*

For the respondents: *James R. Hermsen, Karr, Tuttle, Koch, Campbell, Mawer & Morrow, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Lindal Cedar Homes, Inc., a corporation, and Sir Walter Lindal, individually and as a former officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and the Truth in Lending Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.) is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent and he formulated, directed and controlled the policies, acts and practices of Lindal, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.

Allegations below stated in the present tense include the past tense.

PAR. 2. Respondents are engaged in the advertising, offering for sale, and sale of pre-cut wood buildings, and distributorships to sell pre-cut wood buildings. Lindal, Inc. reported 1974 sales of pre-cut wood buildings as \$8,091,171, and distributorship fees received as \$64,725.

PAR. 3. Respondents' acts and practices as hereinafter set forth are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of their business, and for the purpose of inducing the purchase of their pre-cut wood buildings, respondents, through advertisements, brochures, promotional material, and other means, make numerous statements and representations with respect to their products. By and through the use of such statements and representations, respondents represent, directly or by implication, that:

A. Most persons can assemble a Lindal, Inc. pre-cut wood building with little difficulty;

B. Because most Lindal, Inc. components are pre-cut to exact lengths and numbered for each assembly, a purchaser can save as much as 75 percent in assembly time;

C. A Lindal, Inc. pre-cut wood building can be erected to the weatherproof stage in two to three weeks, or about one-fourth of the time usually required for a conventional home.

PAR. 5. In truth and in fact:

A. In certain instances, purchasers have experienced difficulty in assembling a Lindal, Inc. pre-cut wood building.

B. In certain instances, because of incomplete part numbering, shortages and/or substitution of materials, purchasers, in assembling Lindal, Inc. pre-cut wood buildings, have not saved as much as 75 percent in assembly time.

C. In certain instances, because of incomplete part numbering, shortages and/or substitution of materials, purchasers have been unable to erect Lindal, Inc. pre-cut wood buildings to the weatherproof stage in three weeks.

Therefore, the acts, practices and representations set forth in Paragraphs Four and Five are false, misleading, deceptive and unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 6. In the course of purchasing Lindal, Inc. pre-cut wood buildings, purchasers reasonably believe that respondents will make timely delivery of such buildings in a condition suitable for immediate commencement of construction. In truth and in fact, however, immediate commencement of construction of such buildings after the scheduled delivery date is difficult or impossible because in certain instances:

- A. Lindal, Inc. has failed to make timely delivery of its products;
- B. Lindal, Inc. has failed to make complete delivery of its products.

Furthermore, in certain instances, respondents have either failed to correct such untimely or incomplete delivery or have corrected such delivery only after protracted negotiations. Such acts and practices of respondents have resulted in substantial expense, inconvenience, and hardship to certain purchasers.

Therefore, said acts and practices are unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. In the course of their business respondents have used sales and earnest money agreements which contain, *inter alia*, the following standard terms:

A. * * * Purchaser accepts delivery when the material is loaded on carrier at plant, and either the carrier or the Purchaser is responsible for any theft, fire or any damage by any cause once the material leaves the plant.

B. The factory price entered above is based on current published price list and specification sheet and is good for 60 days from the date of this order. Should delivery from the plant be after this period, the price and specifications will be adjusted to those then current.

C. This contract contains the entire contract as between the parties and there are no conditions, warranties or representations expressed or implied, statutory or otherwise, with respect to this contract or affecting the rights of the parties, other than as specifically contained herein. Nonesuch have been made by the Seller, its officers, or agents, nor shall any agreement collateral hereto be binding upon the Seller unless it is included in the contract in writing.

PAR. 8. In certain instances, the use of each of the aforesaid provisions, in combination with the acts and practices of respondents, is unfair to purchasers of Lindal, Inc. products in that:

A. The provision set forth in Paragraph Seven, subparagraph A, requires purchasers to accept the goods and pay the full purchase price prior to any opportunity to inspect the goods. In certain instances when purchasers have claimed that delivery was incomplete, respondents have rejected their complaints on the basis that incomplete delivery resulted from theft or damage after the goods were accepted by the purchasers. When subsequent negotiations have failed to resolve the disputes, certain claims have been abandoned by the purchasers due to the cost, inconvenience and problems of proof associated with pursuing such claims.

B. The provision set forth in Paragraph Seven, subparagraph B, permits respondents to adjust the purchase price to the price then current if, after the contract is made, delivery has not occurred within sixty days. Prior to the signing of the contract, however, respondents represent that the pre-cut wood building package is presently in

storage, or will be packaged and ready for delivery within sixty days. Nevertheless, when delivery does not occur within sixty days of the contract date, respondents, in certain instances, have increased the price to the new prevailing price for their product, if in fact a new prevailing price is in existence. Such new prices are higher than purchasers could reasonably have anticipated at the time the contract was made. Thus, certain purchasers are forced to pay new, higher contract prices set by respondents or forfeit part or all of the deposits required by respondents.

C. The provision set forth in Paragraph Seven, subparagraph C, purports to legally exclude and disclaim all implied-in-law warranties. In truth and in fact, under the applicable law of several states in which Lindal, Inc. buildings are sold at retail, such exclusions and disclaimers are unenforceable. Therefore, this contract term has the tendency and capacity to mislead purchasers as to their warranty rights.

Furthermore, the effect of the contract terms described in Paragraph Seven is not generally understandable to persons lacking legal training. Therefore, certain purchasers believe they have waived valuable remedial rights when respondents use or require others to use these terms in contracts for the purchase of Lindal, Inc. products. Thus, the use of the contract terms described in Paragraph Seven is unfair, deceptive and misleading in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the course of their business, respondents disseminate certain advertisements and promotional material in a continuing program of recruiting distributors to sell products of Lindal, Inc. Typical and illustrative of the representations and statements appearing in such material, but not all inclusive thereof, are the following:

A distributorship in an average metro area of 300,000 should make its owner \$50,000 income during the second or at least third year. Double, or \$100,000 is also highly possible. With a lesser effort and more leisurely life style, \$25,000 is probable.

A Lindal distributor recently grossed \$156,000 working one day a week. * * * by putting in an extra day or two each week he could have grossed at least \$300,000, for an income of well over \$70,000.

PAR. 10. Through the use of such statements and representations, and others not specifically set out herein, respondents have represented, directly or by implication, that an average distributor can reasonably expect to make a net profit between \$25,000 and \$100,000 after a few years of operation.

PAR. 11. In truth and in fact, at the time the representations were made, respondents had no reasonable basis from which to conclude that

an average distributor could reasonably expect to make a net profit between \$25,000 and \$100,000 after a few years of operation.

Therefore, the acts, practices and representations set forth in Paragraphs Nine, Ten and Eleven are false, misleading, deceptive and unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the aforesaid unfair and deceptive acts and practices have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that those statements and representations are true and complete and to induce substantial numbers of persons to purchase products and distributorships from Lindal, Inc.

PAR. 13. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

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

PAR. 14. Respondents, in the ordinary course of their business as aforesaid, and particularly between July 1972 and December 1973, as to certain purchasers of Lindal, Inc. buildings, have regularly extended consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 15. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused purchasers to execute promissory notes of various types upon which minimal consumer credit cost information is set forth. In most instances, respondents and their agents have not provided these purchasers with any other consumer credit cost disclosures.

By and through the use of such notes, respondents:

A. Failed to use the terms "cash price," "cash downpayment," "unpaid balance of cash price," "unpaid balance" and "prepaid finance charge" and have failed to give the corresponding disclosures with those terms as required by Sections 226.8(c)(1),(2),(3),(5) and (6), respectively, of Regulation Z.

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

C. Failed to disclose the annual percentage rate computed in accordance with Section 226.5 of Regulation Z as required by Section 226.8(b)(2) of Regulation Z.

D. Failed to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

E. Failed, in some instances, where a security interest was retained or acquired by respondents in connection with the credit sale, and where a clear identification of the property to which the security interest relates could be made on the note, to provide such identification as required by Section 226.8(b)(5) of Regulation Z.

F. Failed to furnish to the purchaser a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 16. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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 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:

A. Respondent Lindal Cedar Homes, Inc. is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent, and he formulated, directed and controlled the policies, acts and practices of Lindal Cedar Homes, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.

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

I.

It is ordered, That respondents Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.), a corporation, its successors and assigns, and its officers; Sir Walter Lindal, individually and as a former officer of Lindal, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any building, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation in writing, orally, visually, or in any other manner, directly or by implication, as to the ease, economy or time involved in the construction of any building, unless at the time the representation is made respondents:

A. Have a reasonable basis for such representation based on a statistically valid sample of those persons who have either purchased or constructed Lindal, Inc. buildings; and

B. Make available to distributors of Lindal, Inc. products and to the general public, at the point of retail sale, copies of a brief but comprehensive statement of the substantiating material, in terms understandable to the average consumer.

II.

It is further ordered, That respondents, their successors and assigns, in connection with the advertising, offering for sale or sale of any building do forthwith:

A. Cease and desist from disseminating, using, or causing others to use, in any manner, any sales agreement, earnest money agreement, or other contract which provides directly or indirectly, that:

1. The purchaser must accept or has accepted delivery of respondents' products prior to the time the purchaser has had an opportunity to inspect the goods in a reasonable place, time and manner for damages, defects and shortages.

2. The respondents may increase the price of their product to a price higher than the respondents' prevailing price for like products.

3. Respondents disclaim liability for implied-in-law warranties where such disclaimers are in contravention to applicable state laws.

B. Abide by, and include in all sales agreements, earnest money agreements and other contracts which Lindal, Inc. distributes, uses, or causes others to use, a term which has the following effect and none in contradiction thereof:

The purchaser has the option to cancel the contract and obtain a return of all deposits, less costs for plans and engineering actually incurred by respondents prior to cancellation, should either of the following circumstances occur:

1. If shipment of the ordered merchandise is not made within thirty (30) days of the scheduled shipment date mutually agreed upon by the respondents and the purchaser.

2. If respondents increase the price of their product to the purchaser at any time after a contract for sale of the product has been signed or otherwise consummated.

C. Maintain, abide by, and continue to provide a warranty to every purchaser of their products, whether said purchasers buy directly from respondents or from one of respondents' distributors. Said warranty shall be written and shall incorporate, but not necessarily be limited to, the following standards and terms, in language understandable to the average purchaser:

1. The identity and address of the warrantor.

2. The materials ordered by the purchaser are warranted to be delivered complete at the site designated by the purchaser for delivery. The duration of this warranty shall in no event be less than 10 days from the date when delivery is made at the designated site to the purchaser or to his/her duly authorized agent. There shall be no exceptions or exclusions to this warranty.

3. The materials ordered by the purchaser are warranted to be delivered free from defects and of a kind and quality designated or specified in the contract of sale. The duration of this warranty shall in no event be less than 150 days from the date when the purchaser

receives the designated materials. There shall be no exceptions or exclusions to this warranty.

4. The duties and responsibilities of claimant shall be limited to the filing with respondents of all claims under the warranty in writing. Respondents shall fully and conspicuously disclose the procedure which the consumer should take in order to (a) obtain performance of any obligation under the warranty; and (b) file a complaint with respondents regarding any failure to perform the alleged warranty obligations of respondents, in accordance with the procedures set out in subsection (9), below.

5. All of respondents' warranty service and replacement obligations will be performed without charge to the purchaser.

6. All of respondents' warranty service and replacement obligations performed subsequent to the tender of the materials to the retail purchaser shall be rendered by respondents, either directly or through their distributors or other third parties at the site of the materials.

7. Respondents shall, directly or through their distributors or other third parties:

a. Respond to notice of the need for warranty service or replacement within a reasonable time not to exceed seven business days of receipt of said notice by respondents; and

b. Complete said service or replacement covered by the warranty within a reasonable time not to exceed forty-five calendar days following said receipt of notice.

8. Respondents shall maintain full and adequate records which disclose the date of receipt and the date of disposition of each request for warranty service (including any refusal to accept a request and the reason for such refusal) received by respondents.

9. Respondents shall, beginning within 120 days of the effective date of the order, establish a uniform procedure for the systematic receipt and analysis and fair disposition of all complaints or disputes which may arise between purchasers of respondents' products and respondents or respondents' distributors or other third parties, regarding any alleged failure of respondents to perform their warranty obligations.

Such procedure shall incorporate but not necessarily be limited to:

a. Prompt evaluation and response by respondents to all complaints within a reasonable time not to exceed seven business days after receipt by respondents;

b. The designation of a single focal point within the corporation for the receipt of said complaints;

c. An effective mechanism for the fair and impartial resolution of

3

Decision and Order

such disputes by corporate level personnel not responsible for sales on a day-to-day basis;

d. An accurate and complete recordkeeping system regarding the nature and disposition of all such disputes and complaints received by respondents;

e. Periodic review and evaluation by respondents of the effectiveness of such procedures and correction of such procedures where necessary.

10. Respondents shall disclose to each retail purchaser of their products, any delegation of warranty responsibility to distributors or other third parties, *provided however*, that disclosure of said delegation must be accompanied by the additional disclosure that such delegation in no way relieves respondents of the ultimate responsibility to fulfill all of respondents' warranty obligations.

11. Respondents shall fully and conspicuously disclose that the warranty provided for herein does not warrant the quality of the construction of the building by respondents' distributor or any other contractor, unless such is the fact.

D. Require each and every person, partnership or corporation which now or at anytime in the future is licensed, franchised or in any way authorized to sell or offer for sale Lindal, Inc. products, as a condition of doing business with Lindal, Inc., to sign an agreement, either at the time of initial franchising or authorization, or at the time of renewal of said franchise or authorization, which includes terms to the following effect and none in contradiction thereof:

1. Distributor will comply with all local, State and Federal laws with respect to the sale of Lindal, Inc. products.

2. Distributor will utilize only written contracts in the sale of Lindal, Inc. products. To this end, Lindal, Inc. will:

a. Provide each distributor with a form of sales contract for use by the distributor in sales to customers which shall comply with the provisions of Parts II.A. and II.B. of this order; and

b. Not discourage, directly or indirectly, the use of this form by distributors.

3. Distributor will make all sales of Lindal, Inc. products so that its customers acquire all rights in accordance with the Lindal, Inc. warranty. To this end, distributor shall include the full text of the Lindal, Inc. warranty as an express term of all contracts for the sale of Lindal, Inc. products.

4. Distributor acknowledges receipt of a copy of this order.

E. Enforce the agreement specified in Part II.D. of this order in the following manner:

1. Whenever respondents receive information, directly or indirect-

ly, that a distributor is not in compliance with said agreement, respondents shall immediately notify said distributor of his/her non-compliance.

2. Whenever a distributor fails to cure said non-compliance within 30 days of receipt of respondents' notice of non-compliance, respondents shall terminate said distributor.

F. Make contact with each distributor to whom respondents may have distributed sales and earnest money agreement forms which contain the language stated in Paragraph Seven of the complaint, and use their best efforts to obtain possession of such sales and earnest money agreement forms from the distributors, and destroy such forms.

III.

It is further ordered, That respondents, their successors and assigns, in connection with the advertising, offering for sale or sale of any distributorship or franchise do forthwith cease and desist from:

A. Failing to furnish each prospective franchisee with the following information in a legible, written document, at the earlier of the time when the first personal meeting for the purpose of discussing the possible sale of a franchise occurs between such prospective franchisee and Lindal, Inc. (hereinafter "franchisor") or its sales representative; or at least fifteen business days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation or the payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise:

1. a. The trade name or trademark under which the franchisor and the prospective franchisee will be doing business;
- b. The official name and address and principal place of business of the franchisor, the parent firm or holding company of the franchisor, if any; and
- c. All persons the franchisee is required or is suggested to do business with by the franchisor which have a substantial connection with the franchisor.
2. The business experience stated individually of each of the franchisor's directors and chief executive officers including the biographical data concerning all such persons.
3. The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee; has granted franchises for such business; and has granted franchises in other lines of business.
4. A certified balance sheet for the most recent year; a certified profit and loss statement for the most recent three year period; and a

statement of any material changes in the financial soundness of the franchisor since the date of such financial statements.

5. Where such is the case, a statement that the franchisor or any of its current directors or chief executive officers:

a. Has been held liable in a civil action by final judgment, has been convicted of a felony or has plead nolo contendere to a felony charge if such felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property for the most recent seven year period.

b. Is subject to any currently effective State or Federal agency injunctive or restrictive order relating to or affecting franchise activities or the franchisor/franchisee relationship.

c. Has filed in bankruptcy or has been associated as a director or chief executive officer of any company that has filed bankruptcy or reorganization proceedings for the most recent seven year period.

d. Has been a party to any cause of action brought by franchisees against the franchisor since January 1, 1970 or for the most recent seven year period, whichever is shorter, which resulted either in an out of court settlement in excess of \$1,000 or a judgment against the franchisor.

6. A factual description of the franchise offered to be sold.

7. a. A statement of the total funds which must be paid by the franchisee to the franchisor or to a person having a substantial connection with the franchisor, in order to obtain or commence the franchise operation, such as deposits, downpayments and fees.

b. If all or part of these fees or deposits are returnable under certain conditions, these conditions must be set forth; and if not returnable such fact so disclosed.

8. A statement describing the recurring fees required to be paid, in connection with carrying on the franchise business, by the franchisee to the franchisor or to persons having a substantial connection with the franchisor, including but not limited to royalty, lease, advertising, training, and sign rental fees.

9. A statement disclosing:

a. The name and address of all franchises and company-owned outlets operating at the end of the last calendar year indicating which units are company-owned outlets, and

b. The number of franchisees operating at the end of the last calendar year who, during the last calendar year, purchased buildings from Lindal, Inc. in the following total quantities:

- i. 0 to 2
- ii. 3 to 5

- iii. 6 to 8
- iv. 9 to 15
- v. more than 15

10. A statement describing any real estate, services, supplies, products, signs, fixtures, or equipment relating to the establishment or the operation of the franchise business which the franchisee is required to purchase, lease or rent directly or indirectly from the franchisor or persons having substantial connection with the franchisor.

11. A description of the basis and the amount of any revenue or other consideration to be received by the franchisor, or persons having a substantial connection with the franchisor, from suppliers to the prospective franchisee in consideration for goods or services required or suggested to be purchased by the franchisee.

12. a. A statement of the terms and conditions of any financing arrangement offered directly or indirectly by the franchisor or any person having a substantial connection with the franchisor, and

b. A description of any payments received by the franchisor from any person for the placement of financing with such person.

13. A statement whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services he may offer for sale, or limited in the customers to whom he may sell such goods or services.

14. A statement of the extent to which the franchisor requires the franchisee to participate personally in the direct operation of the franchise.

15. A statement disclosing:

a. The conditions and terms under which the franchisor allows the franchisee to sell, lease, assign, or otherwise transfer his franchise, or any interest therein, and

b. The amount of consideration which must be paid to the franchisor for such sale, lease, assignment or transfer, if any.

16. A statement disclosing:

a. The conditions under which the franchise agreement may be terminated by the franchisor, renewal may be refused, or the franchise may be repurchased by the franchisor at its option;

b. The number, stated for each category, of franchises which were terminated, renewal refused or repurchased during the preceding calendar year and a complete explanation thereof; and

c. The conditions under which the franchise agreement may be terminated by the franchisee and the number of franchises voluntarily terminated by franchisees during the preceding calendar year.

17. If site selection is involved, a statement disclosing the range of

time that has elapsed in the preceding calendar year, between signing of a franchise agreement and site selection. If, in addition, operating units are to be provided, a statement disclosing the range of time that has elapsed in the preceding calendar year between the signing of the franchise agreement and opening of the franchise outlet.

18. If the franchisor offers a training program or informs the prospective franchisee that it intends to provide him/her with training, the franchisor must specify the specific type and nature of the training, the number of hours or days of instruction, and the cost to the franchisee, if any.

19. If a franchisor uses the name of a "public figure" in connection with the recommendation of the franchise or as a part of the name of the franchise operation, a statement disclosing:

a. The nature and extent of the public figure's involvement and obligations to the franchisor, including but not limited to the promotional assistance the public figure will provide to the franchisor and to the franchisee;

b. The total investment of the public figure in the franchise operation; and

c. The amount of any fees the franchisee will be obligated to pay for such involvement and assistance provided by the public figure.

20. A statement explaining clearly the terms and conditions of any covenant not to compete which a franchisee may be required to enter into.

All of the foregoing information in Part III.A.1. through 20. is to be contained in a single disclosure statement, which shall not contain any promotional claims or other information not required by this order or required by State law. This does not preclude franchisors from giving explanatory data in separate literature so long as such explanatory data are not inconsistent with the disclosure statement required by this order. This disclosure statement shall carry a distinctive and conspicuous cover sheet with the following notice (and no other) imprinted thereon in boldface type of not less than 10 point size:

INFORMATION FOR PROSPECTIVE FRANCHISEES REQUIRED BY
FEDERAL TRADE COMMISSION

This information is provided for your own protection. It is in your best interest to study it carefully before making any commitment.

The information contained herein has not been reviewed or approved by the Federal Trade Commission. A false, inaccurate or incomplete statement may constitute a violation of federal law, and should be reported to the Federal Trade Commission, Washington, D.C. 20580.

B. Making any oral or written representation of a prospective franchisee's potential sales, income, gross or net profit 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 FRANCHISEE. THEY ARE MERELY ESTIMATED."; and

5. The amounts represented are not in excess of sales, income or profits actually achieved by existing franchises. If franchises have not been in operation long enough to indicate what sales, income or profits may result, then representations of such to a prospective franchisee are prohibited.

C. Making any representation with respect to sales, income or profits made by franchisees, unless such sales, income, or profit amounts are reasonably likely to be achieved by the person to whom the representation is made.

D. 1. Making any claim with respect to past or potential sales, profits or earnings in any advertising, promotional material, or discussion between a franchisor's representatives and prospective franchisees, for which the franchisor does not have substantiation in its possession, which substantiation shall be made available to prospective franchisees or the Commission or its staff upon demand.

2. Making any claim or representation in advertising or promotional material, or in any oral sales presentation, solicitation or discussion between a franchisor's representatives and prospective franchisees, which is inconsistent with the information required to be disclosed by this order.

E. Failing to furnish the prospective franchisee with a copy of the completed franchise agreement proposed to be used at least fifteen business days prior to the date the agreement is to be consummated.

F. Failing to return the funds or deposits in accordance with the conditions stated pursuant to subparagraph (A)(7)(b) of this paragraph.

G. Failing to furnish the prospective franchisee with a copy of the Federal Trade Commission's publication entitled "FTC Buyer's Guide No. 4, Franchise Business Risks" at the earlier of the time:

1. When the first personal meeting for the purpose of discussing

the possible sale of a franchise occurs between such prospective franchisee and the franchisor or its sales representative; or

2. At least fifteen business days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation, or the payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise. (A limited number of said publication may be obtained from the Commission; printing or reproduction of said publication, however, shall be at the franchisor's expense.)

IV.

It is further ordered, That respondents, their successors and assigns, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

A. Failing to use the terms "cash price," "cash downpayment," "unpaid balance of cash price," and "pre-paid finance charge" and the corresponding disclosures with those terms as required by Sections 226.8(c)(1), (2), (3), (5) and (6), respectively, of Regulation Z.

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

C. Failing to compute and disclose the annual percentage rate accurately to the nearest quarter of one percent, as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

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

E. Failing to describe or identify the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to provide a clear identification of the property to which the security interest relates as required by Section 226.8(b)(5) of Regulation Z.

F. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

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

V.

It is further ordered, That respondents, at all times subsequent to the date of this order, maintain complete records relative to the manner and form of their compliance with each Part of this order during the immediately preceding two-year period. Such records shall include all advertising, promotional literature, the basis for all applicable advertising claims, correspondence with persons who formulate or place advertising, and other pertinent documents, and shall be made available for inspection and photocopying by authorized representatives of the Federal Trade Commission upon reasonable notice at respondents places of business or other properly designated location.

VI.

It is further ordered, That the corporate respondent shall forthwith distribute a copy of this order to each of its officers and distributors, and to each agent, representative or employee who is engaged in the preparation or placement of advertisements.

VII.

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 persons, respondents shall require said successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order.

VIII.

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

IX.

It is further ordered, That the individual respondent named herein promptly notify the Commission of his affiliation with any business or employment, in the event of such affiliation. Such notice shall include his 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.

Decision and Order

X.

It is further ordered, That respondents shall, within sixty 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.

Complaint

87 F.T.C.

IN THE MATTER OF

WALKER-THOMAS FURNITURE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2775. Complaint, Jan. 6, 1976—Decision, Jan. 6, 1976*

Consent order requiring a Washington, D.C., retailer of furniture, appliances, and housewares, among other things to cease offering merchandise without disclosing prior use; failing to honor guaranties and warranties; failing to disclose cost terms; failing to deliver ordered merchandise; harassing delinquent debtors; failing to maintain adequate records; and failing to make disclosures concerning the extension of consumer credit required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Gary M. Laden, Alan L. Cohen and Robert L. Patterson.*

For the respondents: *Earl W. Kintner, Daniel C. Smith and Ruth P. Roland, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. Harry Protas, Protas, Kay, Goldberg, Spivok & Protas, Bethesda, Md.*

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 Walker-Thomas Furniture Co. Inc., a corporation, and Robert Walker Thomas and Percy Weinberg, individually and as officers 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 Walker-Thomas Furniture Co. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business located at 1023-31 7th St., N.W., Washington, D.C.

Respondents Robert Walker Thomas and Percy Weinberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and repairing of furniture, appliances, housewares, and related products to the public at retail. In the course and conduct of their business, respondents have engaged in the extension of credit to customers through retail installment contracts for the financing of items sold and repair services rendered by respondents.

In the course and conduct of their business, respondents have also engaged in the collection of debts incurred by respondents' customers in connection with said customers' use of credit for the financing of items sold and repaired by respondents.

Respondents maintain a group of salesmen who travel door-to-door to the homes of respondents' customers to sell furniture, appliances, housewares, and related products. Respondents' salesmen also function as bill collectors, traveling door-to-door to the homes of respondents' customers to collect periodic payments due to respondents under retail installment contracts executed between respondents and respondents' customers.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia, and 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 business, as aforesaid, respondents receive periodic payments from customers who have purchased merchandise from them under retail installment contracts. In many instances, respondents' customers make payments to respondents which are insufficient, untimely or not otherwise fully in compliance with the payments called for by their retail installment contracts. Respondents, through their salesmen and employees, accept these partial payments, thereby representing, directly or by implication, that such payments will be credited to the customer's account. Respondents then attempt to reject these payments by issuing a check to the customer for the amount of his payment, the check made payable to the customer and Walker-Thomas as co-payees. This practice makes it impossible for the customer to negotiate the check without Walker-Thomas' endorsement. Respondents, therefore, attempt to both reject

these payments and simultaneously retain use of the funds paid to them by the customers without crediting the customers' account with such payments. Such representations were false and misleading and such a practice was and is confusing and misleading to respondents' customers and constitutes an unfair and deceptive act and practice.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents receive periodic cash or money order payments from customers who have purchased merchandise from them pursuant to retail installment contracts. In many instances, respondents do not provide customers with a payment card or other record of the customer's payments received by respondents, nor do they issue receipts for these payments. The failure of respondents to issue such payment cards or receipts denies the customers proof that such payments were made, causes respondents' customers to be unaware of the status of their account at any given time, and prevents the customers from keeping an accurate record of their account with respondents. Such a practice was and is confusing and misleading to respondents' customers, and constitutes an unfair and deceptive act and practice.

PAR. 6. In the course and conduct of their business, as aforesaid, respondents sell and deliver merchandise to their customers. In many instances, this merchandise is returned to respondents, for various reasons, after said merchandise has been left in the homes of customers for periods up to as much as several weeks after the sale. Such merchandise, in many instances, is returned to respondents' inventory and is intermingled with new merchandise in respondents' inventory. In intermingling respondents' merchandise as aforesaid, said merchandise cannot thereafter accurately be identified or discerned as having been previously sold to, left in the possession of, or used by previous customers, and is sold as new merchandise without any disclosure that such merchandise has been or may have been previously sold to, left in the possession of, or used by previous customers. The acts and practices of respondents as alleged herein, including respondents' failure to disclose the material fact to prospective customers that merchandise from such inventory has been, previously sold to, left in the possession of, or used by previous customers, has the tendency and capacity to mislead a substantial portion of respondents' customers into the erroneous and mistaken belief that such merchandise is new, and into the purchase of said merchandise by reason of such erroneous and mistaken belief. Therefore, these acts and practices of respondents, including respondents' failure to disclose material facts as alleged herein, were and are unfair, false, misleading and deceptive.

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

26

Complaint

respondents guarantee their merchandise, in writing, in the following manner:

Televisions, Hi-Fis, Stereos, Radios, Record Players; Miscellaneous Electrical Appliances

NEW — Guarantee Picture Tube — 1 year

All other parts * * * * * 90 days All Plus 30 day Free Service

USED — Overall guarantee-90 days

Washers, Refrigerators, Freezers:

NEW — Washer Motor—1 year

Icebox Motor — 5 years All Plus 30 day Free Service

All Parts — 90 days

USED — Overall guarantee — 90 days

Furniture, House furnishings etc:

NEW — Free from all manufacturers defects and delivery damage.

USED — As is only

ALL GUARANTEES INVALID IN CASE OF ABUSE OR DAMAGE BY CUSTOMER

In many instances, respondents' customers request respondents to repair merchandise still under respondents' guarantee. Respondents, however, do not acknowledge many of these requests until after the guarantee has expired. As a result, respondents effectuate the requested repairs after the guarantee has expired and charge customers for repairs which should have been covered by the guarantee. Such practices were and are unfair, false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, as aforesaid, respondents guarantee their merchandise in the manner described in Paragraph Seven of this complaint. Respondents, in many instances, do not inform their customers of the existence of said guarantee. Respondents' customers, in many instances, are therefore unable to assert their contractual rights pursuant to said guarantee. Thus, said practice was and is unfair, misleading and deceptive, and respondents' failure to inform their customers of the existence of said guarantee constitutes an omission of material fact.

PAR. 9. In the course and conduct of their business and for the purpose of inducing the sale of their merchandise, respondents, through oral sales presentations by their salesmen to prospective purchasers, represent, directly or by implication, that:

1. Merchandise sold by respondents will be delivered to the

customer free from damages or defects, or merchandise which is delivered to customers with damages or defects will be repaired or replaced to the satisfaction of the purchaser.

2. Merchandise which is delivered to customers with damages or defects will be repaired or replaced within a reasonable time.

PAR. 10. In truth and in fact, in many instances:

1. Merchandise sold by respondents is delivered to customers with damages and/or defects, and said merchandise is not repaired or replaced to the satisfaction of the customers.

2. Merchandise which is delivered to customers with damages and/or defects is not repaired or replaced within a reasonable time.

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

PAR. 11. In the course and conduct of their business, as aforesaid, respondents' salesmen and employees solicit orders for merchandise in the homes of respondents' customers. In many instances, customers order merchandise from respondents without knowing the exact cost of the merchandise or the cost of the financing of said merchandise, or the customers rely on the salesman's general representations as to price and financing. In many instances, respondents do not inform the customer of the exact cost of the merchandise or the cost of the financing of said merchandise until after the merchandise is delivered. These practices result in customers having merchandise delivered to and placed within their homes, while subsequently discovering that the prices and financing terms of said merchandise are more costly than what the customer had either reasonably anticipated or the salesmen had represented. Thus, said practices were and are unfair, false, misleading and deceptive and the failure of respondents to inform their customers of the cost of ordered merchandise and the financing terms at the time that the merchandise is ordered constitutes an omission of material facts.

PAR. 12. In the course and conduct of their business, as aforesaid, respondents solicit orders for merchandise in the homes of respondents' customers. In the course of such solicitation, respondents' salesmen and employees make representations to customers about various features and characteristics of merchandise which the customer orders. In many instances, the actual merchandise delivered to the customer by respondents does not contain the features and characteristics which were represented by respondents' salesmen and employees at the time of the purchase. Therefore, such representations were and are false, misleading, and deceptive.

PAR. 13. In the course and conduct of their business, as aforesaid, respondents knowingly extend credit through retail installment

contracts to many low income customers who are living on fixed incomes. In many instances, respondents' customers do not fulfill their contractual obligations to respondents because of, among other reasons, the failure of the merchandise purchased from respondents to properly perform for the purpose for which the merchandise was intended to be used, or the changing of circumstances affecting the customer's fixed income which render him economically unable to meet the periodic payments called for by the retail installment contract. In many of these instances, respondents utilize self-help repossession to take back the merchandise, or coerce the customer into "voluntarily" turning in the merchandise in exchange for respondents canceling the balance due on the customer's account. Respondents repossess this merchandise, in many instances, by removing the merchandise from a customer's home when no adult is present, or intimidating the customer into believing that the customer's only alternatives are to pay the full amount due on his account or give up the merchandise without judicial process.

Respondents normally resell the merchandise which they pick up in the manner described in the above paragraph. In many instances, customers who have had their merchandise repossessed or who "voluntarily" turn in their merchandise have paid a substantial amount to respondents for the merchandise, and receive no benefit or refund for the payments they have made when the merchandise is turned in. In addition, any valid reason the customers have for nonpayment under their retail installment contract can no longer be raised when the merchandise is given up. Thus, the practices as alleged herein, and the failure of respondents to give their customers a chance to raise valid defenses or reasons for nonpayment, as well as the failure of respondents to give their customers any credit or refund for equity built up by their customers in the returned or repossessed merchandise, was and is an unfair practice.

PAR. 14. In the course and conduct of their business, as aforesaid, respondents engage in the collection of payments pursuant to debts owed on retail installment contracts between respondents and their customers. In the course and conduct of such collection, respondents contact third parties, including but not limited to the employers, friends, and relatives of their customers. Such practices have the capacity and tendency to coerce, pressure, and embarrass respondents' customers, thereby inducing them in many instances to make payments to respondents. Therefore, the use by respondents of such acts and practices was and is an unfair practice.

PAR. 15. In the course and conduct of their business, as aforesaid, respondents engage in the collection of payments pursuant to debts on retail installment contracts between respondents and their customers.

In the course and conduct of such collection, respondents' salesmen and employees harass customers owing money to respondents by repeated phone calls and visits, often made early in the morning and late at night. Such practices have the capacity and tendency to coerce, embarrass, pressure and inconvenience respondents' customers, thereby inducing them in many instances to make payments to respondents. Therefore, the use by respondents of such practices was and is an unfair practice.

PAR. 16. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1 of the Commission's Procedures and Rules of Practice, 16 C.F.R. §1.11, *et seq.*, has conducted a proceeding for the promulgation of a trade regulation rule pertaining to a cooling-off period for door-to-door sales. Notice of this proceeding, including a proposed rule, was published in the *Federal Register* on September 29, 1970 (35 F.R. 15164). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rule.

After it had considered suggestions, criticisms, objections, and other pertinent information in the record, the Commission on February 17, 1972, published a revised proposed rule in a notice in the *Federal Register* (37 F.R. 3551) extending an opportunity to interested parties to submit data, views or arguments regarding the revised proposed rule. A period of 30 days was allowed for the submission of written statements.

The Commission considered all matters of fact, law, policy and discretion, including the data, views and arguments presented on the record by interested parties in response to the notices, as prescribed by law, and determined that the adoption of the trade regulation rule and its statement of basis and purpose was in the public interest, and, accordingly promulgated the Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales on October 18, 1972, effective June 7, 1974 (16 C.F.R. §429.1).

PAR. 17. In the course of their business, as aforesaid, respondents engage in door-to-door sales, as "door-to-door sales" is defined in the Federal Trade Commission Trade Regulation Rule entitled Cooling-Off Period for Door-To-Door Sales, effective June 7, 1974. In the course of these door-to-door sales, subsequent to June 7, 1974, respondents do not give their customers proper notice, as required by Sections (a) and (b) of the rule, of their right to rescind the contract within three business days after the date of the transaction.

PAR. 18. Respondents' aforesaid violations of the Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales constitutes a violation of Section 5 of the Federal Trade Commission Act.

PAR. 19. 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 of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 20. 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 into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief. These unfair acts and practices also have the capacity and tendency to coerce respondents' customers into making payments of money to respondents.

PAR. 21. 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 Walker-Thomas Furniture Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business located at 1023-31 7th St., N.W., Washington, D.C.

Respondents Robert Walker-Thomas and Percy Weinberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

ORDER

I

For the purpose of this Order the following definitions shall apply:

A. **RETAIL INSTALLMENT CONTRACT** — is a written agreement between respondents and a customer under which respondents sell merchandise to a customer while extending credit to said customer for the purchase of said merchandise and retaining a security interest in the merchandise. Such credit is extended on an installment basis, whereby respondents' customers agree to make a specified number of payments to respondents at specified time intervals to satisfy the obligation.

B. **PAYMENT** — is a periodic or installment payment due on a retail installment contract. The term "payment" shall also include the tender of a payment of money to respondents by a customer to satisfy a periodic or installment payment due under a retail installment contract, said tender of payment being insufficient, untimely or not otherwise fully in compliance with the payments called for by said retail installment contract.

C. **PAYMENT CARD** — is a ledger or record of payments made to respondents by respondents' customers which is given by respondents

to their customers. This record of payments reflects both all payments made to respondents by respondents' customers as well as a running balance of the customer's account revealing descending balances after all customer payments and ascending balances after all customer purchases from respondents.

D. SELF-HELP REPOSSESSION — refers to respondents' efforts to retake merchandise sold to customers without the use of judicial process.

E. DEBT COLLECTION — refers to any activity other than use of the judicial process which is intended to bring about or does bring about repayment of all or part of a consumer debt, except:

a. inquiry to locate a consumer whose whereabouts are genuinely unknown to the respondents; and/or

b. inquiry to determine the nature and extent of a consumer's wages or property;

Provided, That, in these two instances, no specific mention is made of the alleged indebtedness.

F. USED MERCHANDISE — is any merchandise which has been previously left in a customer's home or in a customer's possession or has been previously used for the purposes for which it was intended.

G. FLOOR SAMPLE — is any merchandise that is not used merchandise and has been displayed for inspection by prospective purchasers at respondents' retail outlets.

II

It is ordered, That respondents Walker-Thomas Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Robert Walker Thomas and Percy Weinberg, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device in connection with the repairing, offering for sale, sale and distribution of furniture and appliances, or any other products or services, and in connection with the collecting, attempting to collect, or assisting in the collection of debts, or inducing, or attempting to induce, the payment of accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Receiving any payment from a customer and returning said payment to the customer in either the form of a check payable to the customer and Walker-Thomas as co-payees, or in any form which does not give the customer full use of the rejected funds.

2. Failing to either clearly accept or reject any payment tendered by a customer to respondents.

3. Failing to credit customer accounts, within three (3) business days after its receipt, with any payment tendered by a customer to respondents, if that payment is accepted by the respondents.

4. Failing to give a written receipt for any payment which is tendered by a customer to respondents in a form other than a personal check, if that payment is accepted by respondents. Such receipts shall include the amount of the payment and must be given to the customer at the time the payment is made to the respondents; *provided, however*, that respondents may send such receipts by first class mail if the payment is made by mail.

5. a. Failing to deliver or mail, within three (3) business days of the date of sale, a payment card to all customers who initially finance their purchases from respondents under a retail installment contract, and failing to record each subsequent purchase, along with the current status of that account, on that payment card or a new payment card;

b. Failing to record on such payment card the amount of each payment received from respondents' customers at the time the payment is made by the customers; *provided, however*, that if respondents' customers do not make their payment card available upon request at the time of each payment, or if respondents' customers mail in their payment without enclosing their payment card, respondents do not have to record the amount of the payment on the customer's payment card if they issue a receipt for that payment indicating the amount of the payment and showing the current balance on that customer's account after the payment.

6. a. Selling any used merchandise without first clearly and conspicuously disclosing that such merchandise is "used" to any prospective customer orally, on any contract for the subsequent sale of that merchandise, and in a writing conspicuously attached to the merchandise when it is displayed in respondents' store.

b. Selling any floor sample without clearly and conspicuously disclosing that such merchandise is a floor sample to any prospective customer orally, on any contract for the subsequent sale of that merchandise, and in a writing conspicuously attached to the merchandise when it is displayed in respondents' store.

The oral disclosures required by this Paragraph II(6) must be made prior to the prospective customer's signing a retail installment contract for the merchandise.

7. Representing that any used merchandise or floor sample is new or misrepresenting, in any manner, the nature, extent or degree of prior use of any merchandise offered for sale or sold by respondents.

8. Failing to maintain records which will show the disposition of any used merchandise or floor sample after said used merchandise has been

previously left in a customer's home or in a customer's possession, or said floor sample has been displayed for inspection at respondents' retail outlets. These records shall include complete records of any subsequent sale of said merchandise.

9. Failing to promptly honor the terms of any guarantee or warranty, both express and implied, given by respondents to their customers, if respondents' customers request service or repairs at any time prior to the expiration of the warranty or guarantee. The failure of respondents to effectuate repairs or services prior to the expiration of any warranty or guarantee shall not relieve the respondents of the responsibility of honoring any request for such repairs or services made prior to the expiration of said warranty or guarantee.

10. Failing to issue a copy of any guarantee or warranty given by respondents to their customers at the time of each purchase by a customer.

11. Failing to maintain adequate records of any inquiry, either written or oral, made by respondents' customers to any of respondents' agents or employees requesting repairs to merchandise sold by respondents while such merchandise is still under respondents' warranty or guarantee. Such records shall indicate the date on which the request was made, the nature of the complaint and repair work involved, and the date on which the repair was effectuated.

12. Accepting orders from customers for merchandise or arranging delivery of merchandise to customers unless respondents first disclose to the customer the following in writing:

a. the cash price of the merchandise, as "cash price" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*);

b. the amount of downpayment required;

c. the number, amount and due date or period of payments scheduled to repay the indebtedness;

d. the amount of the finance charge, as "finance charge" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*);

e. the amount of the finance charge expressed as an annual percentage rate, as "finance charge" and "annual percentage rate" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*); and

f. the deferred payment price, as "deferred payment price" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), or the sum of all the payments.

13. Delivering any merchandise to customers which is not what the customer ordered or does not conform to the representations made by

respondents' salesmen and employees concerning said merchandise; *provided, however*, that any nonconforming delivery of merchandise which is made through mistake or inadvertence will not be a violation of this Paragraph II(13) if respondents correct the mistake and deliver conforming merchandise within seven (7) days after respondents are notified by any customer of such nonconforming delivery.

14. Failing to comply with any and all provisions of the Federal Trade Commission's Trade Regulation Rule concerning a *Cooling-Off Period for Door-to-Door Sales* (16 C.F.R. §429.1), which are in effect on the date this order becomes effective, and with any modifications or changes in the aforesaid rule which may be made from time to time. A copy of said rule shall be made a part of this order for purposes of complying with Part IV of this order.

Provided, however, That nothing contained in this order shall relieve respondents of any contractual obligations respecting contracts required by Federal law or the law of the jurisdiction in which the contract is negotiated. When such obligations are inconsistent, respondents may apply to the Commission for relief from Paragraph II (14) of this order with respect to contracts executed in the State in which such different obligations are required.

15. Utilizing any self-help repossession of merchandise sold to any of respondents' customers unless respondents:

a. Orally tell that customer who has purchased the merchandise (*i.e.*, the person who has signed the contract for that merchandise), that the merchandise cannot be taken back without the customer's permission; and

b. Immediately preceding any attempt to repossess merchandise, furnish that customer who has purchased the merchandise with a document containing only the following language appearing in the following manner:

NOTICE — READ THIS

By order of the Federal Trade Commission, Walker-Thomas Furniture Company cannot take back any merchandise from you without your written consent. If you wish to have Walker-Thomas Furniture Company take back any merchandise you have bought from it, you must sign this paper. YOU DO NOT HAVE TO SIGN THIS PAPER AND YOU DO NOT HAVE TO CONSENT TO THE RETURN OF YOUR MERCHANDISE. If you have any problem with defective or damaged merchandise you have bought from Walker-Thomas Furniture Company, call the Better Business Bureau of Metropolitan Washington, D.C., 1111 E Street, N.W., Washington, D.C., at 393-8017. They can help you solve your problem. If you have a dispute with Walker-Thomas concerning defective or damaged merchandise, you have a right to submit your dispute for settlement (arbitration) to the Better Business Bureau within one year from the date your merchandise was delivered.

I consent to have Walker-Thomas Furniture Company take back merchandise I have bought from it. I UNDERSTAND THAT THEY CANNOT TAKE BACK THIS MERCHANDISE UNLESS I CONSENT TO IT.

(date)

(name)

c. Obtain the signature of that customer who has purchased the merchandise from respondents on the document described in Paragraph II (15)(b) of this order; and

d. Maintain adequate records to indicate compliance with Paragraph II (15)(c) of this order.

16. Utilizing any self-help repossession or any attempt without judicial process to take back merchandise sold to any of respondents' customers when such repossession or taking back is accomplished or attempted through the use of any intimidation, deception, coercion, threats of any nature or any statements or conduct which give the customer the impression that the merchandise can be repossessed without the full consent of the customer.

17. a. Communicating or threatening to communicate, in the course and conduct of debt collection, with the consumer's employer or any agent of the employer or any other person not liable for the debt other than the customer's spouse or attorney, except as permitted by order of a court.

b. Failing to provide on the face of all of its retail installment contracts, with such conspicuousness and clarity as is likely to be read and understood by customers, that:

In the course of collecting a debt, Walker-Thomas Furniture Company will not communicate with or threaten to communicate with a customer's employer or any agent of the employer or any other person not liable for the debt other than a customer's spouse or attorney, except as permitted by order of a court.

Provided, however, That should the Federal Trade Commission promulgate a Trade Regulation Rule or Industry Guide concerning Unfair Credit or Debt Collection Practices, then any pertinent less comprehensive or less restrictive provisions of such Rule or Guide shall automatically replace any comparable provisions of Paragraph II (17) of this order when that rule or guide becomes final and effective.

18. Communicating, in the course and conduct of debt collection, with any of respondents' customers before 7:30 a.m. or after 9:00 p.m., or making any visits or phone calls of a harassing nature including, but not limited to, repeated visits or phone calls over unreasonably short periods of time.

III

A. *It is further ordered*, That in addition to other rights given to a customer pursuant to this order, if respondents and a customer are unable to agree upon a settlement of any controversy involving the delivery or repair of any damaged or defective merchandise, or the failure to replace or repair damaged or defective merchandise, then, at the option of the customer, such customer shall have the right to submit that controversy to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the customer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

B. *It is further ordered*, That respondents comply with and abide by any award or decision rendered pursuant to the arbitration procedures of Paragraph III (A) of this order.

Furthermore, respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in any action for money or property allegedly due the respondents or their assignees.

C. *It is further ordered*, That at the time a controversy arises involving the delivery or repair of any damaged or defective merchandise, or the failure to replace or repair damaged or defective merchandise, respondents shall provide adequate notification to customers of their right to submit such controversy to arbitration and that respondents also incorporate the following statement on the face of all retail installment contracts with such conspicuousness and clarity as is likely to be read and understood by customers:

Any right or claim which you may have involving damaged or defective merchandise you have bought from Walker-Thomas Furniture Company may be settled, at your option, by arbitration conducted by the Better Business Bureau and monitored by the Federal Trade Commission. YOU HAVE THIS RIGHT TO ARBITRATION ONLY IF YOU REQUEST ARBITRATION WITHIN ONE YEAR FROM THE DATE THE MERCHANDISE IS DELIVERED TO YOU. If you have any claims which you want to be arbitrated or any questions about arbitration, call the Better Business Bureau, 1111 E Street, N.W., Washington, D.C. at 393-8017.

D. *It is further ordered*, That whenever respondents are required pursuant to the terms of this order to give Notice of a customer's right to arbitration, the notice must set forth the name, address and telephone number of the arbitration tribunal and the manner in which

arbitration can be obtained. Respondents are authorized and directed to change the instructions, contained in the Notice set forth above in Paragraph III(C) of this order, as to how to secure arbitration if circumstances require.

E. *It is further ordered*, That one year after the service of this order upon respondents, respondents may petition the Federal Trade Commission to reopen these proceedings, pursuant to Section 3.72 of the Commission's Rules of Practice, for the purpose of reviewing the effectiveness and/or fairness of the operation of Part III of this order.

F. *It is further ordered*, That Part III of this order shall not apply to sales made by respondents prior to the date this order becomes final and effective.

IV

A. *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 debt collection of respondents' accounts 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.

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

C. *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.

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

E. *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.

APPENDIX "A"

AGREEMENT OF PARTIES — The parties shall be deemed to have made these rules set

forth herein in Appendix A a part of their arbitration agreement. These rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

INFORMAL MEDIATION PERIOD — At its discretion the Better Business Bureau of Metropolitan Washington, D.C. (hereinafter referred to as the BBB), may attempt to informally mediate any dispute between a customer and the respondents for a period of not more than 10 business days after the customer initially requests the BBB to arbitrate a dispute. If, after this 10 day period, the dispute has not been resolved to the satisfaction of both the respondents and the customer, the dispute will be submitted to arbitration at the option of the customer. The BBB is the tribunal which shall administer the arbitration process under these rules.

DEFINITIONS —

A. Arbitration is the process by which two or more parties authorize an impartial party or panel to resolve their dispute.

B. Consumer disputes ("dispute") are any disagreements between respondents and their customers involving the delivery or repair of any damaged or defective merchandise, or the failure to replace or repair damaged or defective merchandise. These disputes do not include fraud, criminal violations, demands for attorney fees, damages from personal injury or other claims which go beyond the actual product or service involved. Excluded also are disputes which may not be arbitrated under the law. If during the course of any proceeding conducted pursuant to these rules, it appears to the Arbitrator that the issues before him do not coincide with this definition, he is authorized to suspend the hearing permanently, narrow the issues to those which fall within this definition, or take whatever other action is deemed necessary.

C. Parties to arbitration are those persons necessary to resolve a dispute, usually the respondents and their customers.

D. Arbitrator is the individual or panel which makes the final decision or award.

APPLICABLE LAW — Rule 70I of the Civil Rules of the Superior Court of the District of Columbia and other applicable laws of the District of Columbia shall govern these rules.

INITIATING ARBITRATION — If a customer notifies the BBB of an intention to submit a dispute to arbitration, the BBB will send the customer a copy of these rules and will obtain the customer's signature on an agreement, designated as an "Arbitration Agreement," binding the customer to arbitration. The BBB will also obtain the respondents' signature (or the signature of their designated agent) on an agreement, designated as an "Arbitration Agreement," binding the respondents to arbitration. The customer's request for arbitration shall include a statement setting forth the nature of the dispute, the approximate amount involved, if any, and the remedy sought. The BBB will then transmit to the respondents the information summarizing the nature of the dispute, the amount involved and the remedy sought. The respondents will then have 5 days to file an answering statement with the BBB. Failure of respondents to file an answer or submit a signed "Arbitration Agreement" shall not operate to delay the arbitration. Upon receipt of a signed arbitration agreement from the customer, the BBB shall commence procedures to arbitrate the dispute pursuant to these Rules.

CHANGE OF CLAIM — After filing or making a request for arbitration, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

APPOINTMENT OF ARBITRATOR — The BBB shall maintain a pool of volunteers from

which the Arbitrator shall be selected. This pool of volunteers should reflect membership of the total community. In all cases the Arbitrator or Arbitrators will be appointed directly by the BBB no later than 7 days after the date upon which the customer submits his signed Arbitration Agreement.

DISCLOSURE BY ARBITRATORS; FILLING VACANCIES — Any person selected to serve as an Arbitrator shall divulge, in his signed acceptance of appointment, any financial, competitive, professional, family, or social relationship, however remote, with the Parties to the dispute or disputes he is assigned to arbitrate. All doubts should be resolved in favor of disclosure. Any such disclosures shall be transmitted to the BBB which shall provide them to the Parties with a waiver/objection form. If a Party objects or if an Arbitrator is unable or unwilling to serve, the BBB may in its discretion select or appoint a replacement. In any event, no person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

NUMBER OF ARBITRATORS — In all cases there shall be one Arbitrator unless both parties or the BBB specify three Arbitrators. If the arbitration agreements submitted by both parties do not both specify three Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed, in which case, the BBB shall appoint the additional arbitrators.

VACANCIES — If any Arbitrators should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules and the matter shall be reheard unless the parties shall agree otherwise.

FACILITIES AND COSTS — Facilities for the holding of hearings and maintenance of records shall be provided by the BBB. All normal and reasonable costs of obtaining services of expert witnesses and testing laboratories are to be borne by the BBB, with extraordinary costs, as determined by the Arbitrator, assessed equitably between the Parties. Costs of stenographic services, record of proceedings, and individual witnesses shall be borne by the requesting Party.

COMMUNICATION AND SERVING OF NOTICES — All correspondence should be sent by certified mail to the BBB. There shall be no direct communication between the Parties and the Arbitrator regarding the dispute, except at the hearing and in the presence of the other Party, or with the other Party's written permission. All correspondence from the Parties to the Arbitrator and vice-versa shall be sent through the BBB. Any Party agreeing to arbitration pursuant to these rules shall be deemed to have consented that any notices or other communication relevant to arbitration proceedings may be served by registered mail addressed to the Party or his attorney at his last known address.

NOTICE OF APPOINTMENT — Notice of Appointment shall be mailed to the Arbitrator by the BBB along with a copy of these rules. The signed appointment form together with disclosures of any relationships to Parties shall be filed with the BBB prior to the opening of the first hearing.

REPRESENTATION BY COUNSEL — A Party may represent himself or name any person, not necessarily an attorney, to act as his spokesman at an arbitration hearing. Choosing a non-lawyer does not constitute waiver of right to legal counsel. If an attorney is selected, however, the BBB should be furnished his name and address at least 5 days prior to the date of the proceeding so that this information can be forwarded to the opposing Party.

HEARING DATES; NOTICE; WAIVER OF NOTICE — Upon appointment of an Arbitrator, the BBB shall, within three days, establish a date, time and place for the oral hearing, with due regard for the convenience of the Parties and with the agreement of the Arbitrator. This hearing, if at all possible, shall be held within ten (10) days of the

appointment of the arbitrator. Once determined, this information shall be communicated to the Parties by registered mail at least seven (7) days in advance of the date set for the hearing, utilizing the Notice of Hearing Form. Parties objecting to the date, time or location designated shall within three (3) days of receipt of notice, notify the BBB orally or in writing or otherwise be deemed to have waived such objections. Appearance of the Party at hearings shall automatically constitute waiver of notice.

INSPECTION BY ARBITRATOR — At any time prior to the close of the hearing, the Arbitrator shall, if at all possible, arrange for the inspection of the merchandise involved at the request of either party. If the inspection is to be conducted separately from the hearing, the BBB shall provide notice to the Parties and invite their presence. If a Party cannot attend the inspection, the Arbitrator shall make a written or verbal report to the parties and shall afford them the opportunity to comment upon the observations made therein. The BBB shall also arrange for the presence of a technical expert at the inspection at the discretion of the Arbitrator. If possible, inspections should be conducted prior to the hearing.

LABORATORY TESTS, EXPERT OPINIONS — The Arbitrator may require the submission of any article in dispute to an independent testing laboratory for examination and analysis or may engage the services of an independent, impartial expert to inspect and analyze the article or premises in question. The reasonable and ordinary costs, if any, of such services are to be borne by the BBB, which will transmit the opinions rendered by the laboratory or expert to the Arbitrator, with a copy to the parties, as soon as practicable. Such opinions shall be part of the evidence given at the hearing or provided to the Parties as soon as possible prior to the close of the hearing and prior to any Award.

ATTENDANCE AT PROCEEDINGS — Unless otherwise agreed by the Parties in writing, only those persons party to or having a direct interest in the dispute are entitled to attend hearings. The Arbitrator shall have the discretion to require any witness to absent himself from the hearing room when the Arbitrator deems his presence to be unnecessary or undesirable. Representatives of the Council of Better Business Bureaus, Inc., BBB of Metropolitan Washington, D.C., and of the Federal Trade Commission shall be permitted to attend selected arbitration proceedings for the purposes of monitoring the administration of the program set forth herein, provided that these representatives shall preserve the confidentiality of the proceedings.

ABSENCE OF A PARTY — Arbitration hearings may proceed in the absence of any Party who, after due notice of the hearing, fails to appear, but such absence shall not be the basis for a default judgment. Rather, the attending Party shall submit evidence and the Arbitrator may render an Award based thereon. The non-attending Party shall have the right to submit evidence in writing within a reasonable time, to be set by the Arbitrator.

TRANSCRIPT OF HEARING — The BBB shall provide stenographic services or otherwise record the proceedings upon the request of any Party; *provided, however*, that the cost of such services be borne by the requesting Party and that all Parties be provided access to such record. A tape recording of the hearing or any portion thereof may be required by the Arbitrator and any cost thereof shall be borne by the BBB. If any Party brings his own means of recording the proceedings to the hearing, the BBB shall record the proceedings for its files. In all cases, the Arbitrator shall see that a Record of Hearing Form is completed at the close of each hearing.

INTERPRETERS — The BBB shall provide without cost an interpreter when any Party expresses the need for such and when the Arbitrator deems its necessary.

OATHS — The Arbitrator, the Parties, and any witnesses at a hearing shall be placed under oath.

ORDER OF PROCEEDINGS AT THE HEARING —

A. After the oaths are administered, the customer shall summarize his position of the

dispute, stating briefly what relief he is seeking. The respondents shall then present a summary of their position and relief sought.

B. The customer shall next present his claim, evidence and witnesses, if any, and submit to questions from the Arbitrator. The respondents shall then do likewise. Parties may cross-examine.

C. Following the presentation of evidence, each Party shall briefly summarize his position, relating his claims to the proofs and testimony presented.

D. The order of proceedings may vary at the discretion of the Arbitrator in order to assure that full opportunity is given each Party to present all evidence necessary for a decision.

E. The Arbitrator shall declare the hearings closed if no Party has further evidence to offer or witnesses to present. However, before closing the hearing the Arbitrator shall specifically inquire of all the parties whether they have further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrators shall declare the hearings closed.

F. Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

G. The names and addresses of all witnesses and exhibits in order received shall be entered into a "Record of Hearing" form and thereby made a part of the record.

ADMISSION OF EVIDENCE — The Arbitrator shall judge the relevancy of the evidence and may request additional evidence from either Party. He may refuse to admit evidence deemed irrelevant, stating reasons therefor. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

ADDITIONAL PARTIES — In resolving any consumer dispute where someone other than the respondents and customer is necessary to resolve all issues, and where such person has agreed to the issues presented and to be bound by arbitration, the Arbitrator shall name him a Party to the dispute and have complete discretion to include such Party in the proceedings.

ADJOURNMENTS — The Arbitrator may adjourn the proceedings upon the request of a Party or his own motion.

METHOD OF DECISION — All matters of concern submitted to an arbitration panel shall be settled by a majority vote, including procedural questions and issues relating to the Award. The decision of the majority shall be deemed to be the decision of all members of the panel, and no dissenting opinion shall be issued.

REOPENING OF HEARING — At the discretion of the Arbitrator, a hearing may be reopened upon his motion or the motion of a Party. If a hearing is reopened, the time within which an Award must be made is measured from the closing of the last hearing. No hearing shall be reopened after an Award has been made except as provided by law.

CONSERVATION OF PROPERTY — The Arbitrator may issue such orders as necessary to safeguard property which is the subject matter of arbitration or the position of the Parties.

SUBPOENA POWERS; DEPOSITIONS — The Arbitrator may compel the attendance of witnesses and the production of relevant documents according to procedures established by law. The Arbitrator may authorize the taking of depositions of witnesses who are unable to attend the hearing.

AFFIDAVITS — Written affidavits if properly sworn to and notarized will be admissible in lieu of oral testimony, at the discretion of the Arbitrator. The Arbitrator may give such evidence by affidavit only such weight as he deems it is entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the

hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

EXTENSION OF TIME — The Parties may modify any period of time specified in these Rules by mutual agreement and the approval of the Arbitrator. The BBB or the Arbitrator, for good cause, may extend any time period in these Rules except the period established for making an Award. The BBB shall notify the Parties of any time extension.

THE AWARD —

A. Time

The Arbitrator shall render in writing a signed, notarized Award no later than ten (10) days from the date on which the final hearing is closed. If additional materials are to be submitted beyond the final hearing date, the time for an Award shall be ten (10) days from the date set for receipt of such materials, or the date of receipt, whichever is earlier.

B. Scope

The Arbitrator may grant any relief or remedy for a consumer dispute within the scope of the Arbitration Agreement as may be deemed just and equitable and allowable under law.

C. Modification of Award

If there is a mistake of fact or miscalculation of figures on the face of the Award, the BBB shall bring this to the attention of the Arbitrator, at whose discretion the appropriate modification will be effected. The BBB shall transmit any such modification to the Parties immediately upon receipt and posting.

D. Settlement

If the Parties settle the dispute after the commencement of the hearing and prior to the rendering of the Award, the BBB, upon written notice and verification of such settlement, shall terminate the proceedings and so notify the Arbitrator. Upon agreement of the Parties, the Arbitrator shall reduce any such settlement to a written Award.

E. Form and Filing

The Award shall be in writing and recorded on the Award Form and transmitted to the BBB. The BBB shall forward copies of the Award to the Parties.

RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS — The BBB shall, upon the written request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

APPLICATIONS TO COURT — No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

INTERPRETATION OF RULES — The Arbitrator shall interpret these Rules insofar as they relate to his powers and duties. Questions beyond the knowledge or expertise of the Arbitrator shall be referred by the BBB to the Director, Consumer Arbitration, Council of Better Business Bureaus, Inc.

Complaint

IN THE MATTER OF

G. & A. INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2776. Complaint, Jan. 6, 1976—Decision, Jan. 6, 1976*

Consent order requiring two Brooklyn, N.Y., wholesalers of DynaGlaze and Astrashield automobile polish, among other things to cease exaggerating the earnings of any former salesman or the "possible" earnings or profit percentage of a prospective salesman; using pictures or written expressions in advertising which give an exaggerated impression of the success of individuals who have sold the polish; misrepresenting any sales aids or product samples to be "free"; representing that salesmen can obtain exclusive selling territories; and using any statements which exaggerate the lasting qualities of the auto polish. Further, the order requires the firms to send a letter to eligible distributors making a one-time-only offer of a refund for all unsold merchandise returned in good condition within thirty days.

*Appearances*For the Commission: *Matthew Gromet.*For the respondents: *Jack Strauss, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that G. & A. Industries, Inc., and Nord-Viscount Incorporated, corporations, and Louis Green, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent G. & A. Industries, Inc. is a New York corporation with its office and principal place of business located at 50 Lawrence Ave., Brooklyn, New York.

Respondent Nord-Viscount Incorporated is a New York corporation with its office and principal place of business located at 50 Lawrence Ave., Brooklyn, New York.

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

PAR. 2. Respondents are now and have been engaged in the

advertising, offering for sale, sale and distribution of various product at the wholesale level to persons who act as salesmen of these product to the public. Products distributed by respondents have included, *intelia*, automobile cleaning and polishing compounds. Sales of such products to salesmen are induced by advertisements in national publications and by promotional materials sent by mail.

PAR. 3. In the course of their business, respondents have been and are now engaged in acts and practices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondents promote their products and their product distribution plans by the use of advertisements in magazines of national circulation and by advertisements sent through the United States mail. Merchandise of substantial value is sold by respondents and is shipped from respondents' place of business in New York to purchasers located in various other States and the District of Columbia.

PAR. 4. In the course of their business, and in order to recruit salesmen to sell respondents' products to the general public, respondents have disseminated and caused to be disseminated certain advertisements concerning their products. Within these advertisements, respondents have made certain statements and representations respecting the high earnings which can be made by selling respondents' products and the ease with which high earnings can be realized. Typical and illustrative of these statements and representations made by respondents in said advertisements, but not all inclusive thereof, are the following:

ENJOY a YEAR'S PAY in 3 MONTHS

EXPECT EARNINGS OF \$15 TO \$35 AN HOUR PART-TIME or FULL TIME!

BUILD A \$50,000 BUSINESS * * * GIVING AWAY FREE SAMPLES!

Yes You Can Literally RETIRE WITH RICHES Just By Passing Out FREE Samples of ASTROSHIELD, The Only Auto Polish and Glaze GUARANTEED IN WRITING TO LAST AS LONG AS YOU OWN YOUR CAR!

More than 400% Profit — Up to \$2.32 Cash Profit On Each Easy \$3 Sale!

The Gold Rush has started! For a select group of wide-awake men — no more than ten to twenty per state — this is the year that will turn daydreams into DOLLARS * * * hard cash dollars that can add up to a steady, ever-growing income of \$20,000 * * * \$35,000 * * * yes, even \$50,000 and more * * *

The product I'm talking about makes "selling" obsolete, old-fashioned, and unnecessary. Your biggest problem will be to keep enough on hand to supply the demand.

Authorized Distribution Rights to Dyna-Glaze are now being granted to qualified applicants on a first-come, first-served basis.

ONE WORD OF WARNING: I am seeking only a limited number of ambitious men and women to share in the American distribution of Dyna-Glaze.

Distributorships will be rewarded FREE to men who show me they can do the job. NO FRANCHISE FEES, ACTIVITY GUARANTEES OR OTHER CHARGES WILL BE MADE.

PAR. 5. Through the use of the aforesaid statements and representations, and others not specifically set forth herein, respondents have represented, directly or by implication, that:

1. The average person selling respondents' products can reasonably expect to earn \$15 to \$35 an hour working full or part time.

2. The average person selling respondents' products can reasonably expect to earn \$50,000 a year by giving away samples which are furnished by respondents at no cost.

3. A person selling respondents' products will make a 400 percent profit on each \$3 sale.

4. Respondents have a reasonable basis from which to conclude that their products can be sold by salesmen easily, quickly and in substantial quantities on a regular and continuing basis.

5. Only a limited number of persons will be permitted to sell respondents' products in territories that will be assigned on a first-come, first-served basis without any fees, obligations or hidden costs.

PAR. 6. In truth and in fact:

1. The average person selling respondents' products cannot reasonably expect to earn \$15 to \$35 an hour. Such earnings are gross exaggerations and are greatly in excess of the average earnings of persons selling respondents' products. Respondents have no knowledge of the earnings made by their salesmen.

2. The average person selling respondents' products cannot reasonably expect to earn \$50,000 a year. Samples of respondents' products are not furnished free to salesmen, but must be purchased by salesmen from respondents.

3. A person selling respondents' products will not make a 400 percent profit on each \$3 sale. Based on respondents' wholesale price lists, respondents' salesmen can make a gross profit of between 82 percent and 300 percent, the latter percentage only obtainable by salesmen who sell more than 12,000 pints of product directly to consumers every six months. The great majority of respondents' salesmen make a gross profit percentage of 89 percent or less, before allowance for advertising, selling expenses and discounts given to quantity purchasers and subsalesmen.

4. Respondents have no reasonable basis from which to conclude that their products can be sold by salesmen easily, quickly and in substantial quantities on a regular and continuing basis.

5. Respondents do not limit the number of persons who may sell their products; any number of salesmen are appointed by respondents in a given territory. A person maintains his wholesale buying rights only if he buys a stated minimum quantity of merchandise each month. For example, an "area distributor" entitled to buy respondents' product at a 61 percent discount must purchase at least 3000 quarts of product every four months.

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

PAR. 7. In the course of their business, and in order to promote the sale of their car polish to salesmen and consumers, respondents have represented that their polish will protect and beautify an automobile finish for years. Typical and illustrative of such representations, but not all inclusive thereof, are the following:

NEVER WAX YOUR CAR AGAIN

Imagine wrapping your car in an invisible shield of protective "armor" — which, with minimum upkeep, will provide a brilliant, gleaming "showroom" shine not just for weeks, or months, but for YEARS!

EXCLUSIVE 3 YEAR LONGEVITY ASTROSHIELD GUARANTEE

YES, ONCE YOU BUY ASTROSHIELD, YOU NEVER BUY CAR POLISH AGAIN!

That's right: Every can of Astroshield is guaranteed — *in writing* — to actually last the life of your car!

* * * specifically designed to outlast the vehicle to which it is applied.

* * * a single pint can of Dyna-Glaze is GUARANTEED — *in writing* — to protect and beautify your car for up to 18 FULL MONTHS!

PAR. 8. In truth and in fact, respondents' car polish will not protect and beautify any automobile finish for years. According to the instructions on the can of respondents' product, the automobile must be repolished every six months. The finish obtained by using respondents' product will last only a few months or a shorter period of time if the automobile is not washed regularly.

Therefore, the statements and representations set forth in Paragraph Seven hereof were and are false, misleading and deceptive acts or practices.

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

substantial number thereof to purchase respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. 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 or affecting commerce, with corporations, firms and individuals engaged in the wholesale and retail sale of products of the same general type and nature as those sold by respondents.

PAR. 11. 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 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, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said 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. Proposed respondents G. & A. Industries, Inc. and Nord-Viscount Incorporated are New York corporations with their offices and

principal places of business located at 50 Lawrence Ave., Brooklyn, New York.

Proposed respondent Louis Green is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his business 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, G. & A. Industries, Inc. and Nord-Viscount Incorporated, corporations, their successors and assigns, and their officers, and Louis Green, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of automotive cleaning products, or any other articles of merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication:
 - (a) The possible earnings, sales or wholesale purchases which might be made by persons who sell respondents' products, or
 - (b) The earnings, sales or wholesale purchases which have been made by persons who have sold respondents' products in the past,

unless such earnings, sales or wholesale purchases are not greater than the average net earnings, sales or wholesale purchases made consistently by all sellers of respondents' products in the ordinary course of business and under normal conditions and circumstances.

Subdivision (a) of this paragraph shall not prohibit respondents from representing the wholesale cost per unit or per case of their products.

2. Representing any sales aids, product samples or other items as "free," unless respondents supply such items to salesmen without charge, in quantities sufficient to meet the reasonable business needs of the average active salesman. If the quantity of any item that is furnished free is limited, with additional quantities available to salesmen at extra cost, then the free quantity and the cost of additional quantities shall be conspicuously disclosed whenever the item is represented to be free.

3. Representing directly or indirectly that persons can be assigned territories within which to sell respondents' products, or otherwise

representing that only a limited number of persons will be permitted to sell respondents' products.

4. Representing directly or by implication, by the use of: (1) photographs, drawings or written descriptions of amounts of money, automobiles, or any luxury items, or (2) words, phrases or expressions such as "Big Money," "Enjoy a year's pay in 3 months," "Retire with Riches," or others of similar import, that persons may achieve a status of financial or material wealth which in fact is not customarily achieved by persons who sell respondents' products.

5. Representing, directly or by implication, by the use of phrases such as "Never wax your car again," "Never buy car polish again," "18-month guarantee of service," "3 year longevity guarantee," or others of similar import, that one application of respondents' product will last for any period of time in excess of that which respondents can affirmatively establish is the fact.

6. Representing, directly or by implication, that:

(a) Respondents' products can be sold by salesmen easily, quickly or in substantial quantities.

(b) A specified percentage of profit will be earned on sales of respondents' products, unless such percentage is not greater than the net profit percentage, after costs and operating expenses, made by all persons who sell respondents' products.

It is further ordered, That within thirty (30) days after the effective date of this order, respondents shall send to all eligible persons the notice contained in Appendix A or Appendix B, as applicable. For the purpose of this provision, "eligible persons" shall include all persons who:

(a) purchased merchandise from respondents within three (3) years prior to the effective date of this order, and

(b) purchased merchandise from respondents on three or fewer occasions, not including any initial introductory order for five dollars or less.

It is further ordered, That respondents refund, to all persons returning merchandise in accordance with Appendices A and B, all monies paid by such persons for the merchandise returned. Such refunds shall be mailed by respondents within ten (10) days after the return of said merchandise.

It is further ordered, That respondents submit, as part of their compliance report to the Commission, the following information relating to the previous two provisions: (1) The number of persons to whom the notice was sent, (2) the number of persons responding to the offer contained therein, and (3) the total amount of money refunded by respondents pursuant to this offer.

It is further ordered, That respondents shall maintain for at least three (3) years following the date of each publication, copies of each advertisement, including magazine, newspaper, radio and television advertisements, direct mail and any other promotional material utilized by respondents for the purpose of soliciting persons to sell any product or utilized by respondents in the advertising, promotion or sale of any product, together with all documentation and factual material in substantiation of the claims appearing in said advertisements and promotional materials.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices described in this order, for a period of three (3) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That no provision of 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. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That the corporate respondents or their successors or assigns notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, 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 respondents shall deliver a copy of this order to cease and desist, and a copy of the Commission's news release setting forth the terms of the order, to each advertising agency and advertising medium with which respondents deal directly, such as newspaper publishing companies, radio stations or television stations, presently utilized in the course of their business, and that respondents shall, immediately upon opening an account, deliver a copy of such order and news release to any such agency or medium with which they subsequently open an account.

It is further ordered, That for a three (3) year period following the effective date of this order, 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. This provision shall not be construed to exempt in any way the individual respondent, after said three (3) year period, from complying with the other provisions of this order.

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

APPENDIX A — FOR CUSTOMERS OF G. & A. INDUSTRIES, INC.

G. & A. INDUSTRIES, INC.
50 LAWRENCE AVENUE
BROOKLYN, NEW YORK 11230
(DATE)

Dear DynaGlaze Distributor:

Our records indicate that you have purchased only three or fewer shipments of DynaGlaze automobile polish.

If you feel that you purchased this product as a result of any deception on our part or any misunderstanding on your part based on our literature or advertising, we would be most willing to refund your original purchase price for any merchandise returned to us. This one-time offer is limited to merchandise in good condition which is returned (postage prepaid) within 30 days of the postmark date on this letter. Your refund will be sent within 10 days after we receive the DynaGlaze.

Very truly yours,
G. & A. INDUSTRIES, INC.
Louis Green

APPENDIX B — FOR CUSTOMERS OF NORD-VISCOUNT INCORPORATED

NORD-VISCOUNT INCORPORATED
50 LAWRENCE AVENUE
BROOKLYN, NEW YORK 11230
(DATE)

Dear Astroshield Distributor:

Our records indicate that you have purchased only three or fewer shipments of Astroshield automobile polish.

If you feel that you purchased this product as a result of any deception on our part or any misunderstanding on your part based on our literature or advertising, we would be most willing to refund your original purchase price for any merchandise returned to us. This one-time offer is limited to merchandise in good condition which is returned (postage prepaid) within 30 days of the postmark date on this letter. Your refund will be sent within 10 days after we receive the Astroshield.

Very truly yours,
NORD-VISCOUNT INCORPORATED
Louis Green

Complaint

87 F.T.C.

IN THE MATTER OF
STP CORPORATION, ET AL.

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

Docket C-2777. Complaint, Jan. 6, 1976—Decision, Jan. 6, 1976

Consent order requiring a Fort Lauderdale, Fla., manufacturer of oil and gasoline additives and oil filters and its Chicago, Ill., advertising agency, among other things to cease making false and misleading effectiveness claims and representations for its products.

Appearances

For the Commission: *Bruce J. Parker.*

For the respondents: *J. Wallace Adair, Howrey, Simon, Baker & Murchison, Washington, 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 STP Corporation, a corporation, and Stern, Walters & Simmons, 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. STP Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1400 W. Commercial Blvd., Fort Lauderdale, Florida.

Respondent Stern, Walters & Simmons, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 150 E. Huron St., Chicago, Illinois.

PAR. 2. Respondent STP Corporation is now and for some time past has been engaged in the sale and distribution of automotive filters, oil and gasoline treatments and other products to the public under the trade name STP.

Respondent Stern, Walters & Simmons, Inc. is now and for some time past has been an advertising agency; it prepared for publication advertising material including but not limited to the advertising material referred to herein, for the purpose of promoting the sale of STP Corporation products.

PAR. 3. Respondent STP Corporation, in the course and conduct of its business as aforesaid, now causes and for some time past has caused said products, when sold, to be shipped from its place of business 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.

Respondent Stern, Walters & Simmons, Inc., in the course and conduct of its businesses as aforesaid, now and for some time past has performed its said services in various States of the United States; it maintains, and at all times mentioned herein has maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of STP Corporation products, respondent STP Corporation has made and is now making statements and representations through advertisements published in newspapers and magazines, and by means of television and radio broadcasts. Respondent Stern, Walters & Simmons, Inc., in the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of STP Corporation products, made statements and representations through advertisements published in newspapers and magazines, and by means of television and radio broadcasts.

Typical of the statements and representations contained in said advertisements, but not all inclusive, are the following:

A. STP OIL TREATMENT

1. I'm a retired banker who likes to tinker with his car. I use STP Oil Treatment and value it very highly. I asked the dealer if it would be alright to use STP. He says, "If all our customers used it, we might just as well close down our repair shop."

2. New York Traffic. A real nightmare for taxis any time of the day. Meet cab driver Louis Cohen. He fights that traffic for a living. [Cabbie]: The secret to this job is to keep rolling. That's why I've used STP Oil Treatment in all my cabs for over six years now. That's over 300,000 miles * * * without a single starting problem or engine repair. [Anncr.] Take a tip from a cab driver. Have your service station add STP to your car's oil * * *

3. I have a daughter in college in Arizona. She's using our Cutlass car which has 70,000 miles on it. And in her Christmas package, I included STP Oil Treatment so she could keep the old buggy running and she could get it back home one of these days.

4. If an engine's gotta go it alone, it might not make the finish. That's why there's STP Oil Treatment.

5. Being a mother with 3 little children, I don't know too much about cars. The reason I use STP Oil Treatment * * * if you had car problems, there isn't [sic] too many places around here that could help you [television advertisement showing mother with 3 small children driving car through apparently sparsely populated farming country]. It gives me

peace of mind knowing I can use a product such as STP * * * and I can get from one place to another without having to worry.

6. I drive to work in my Lincoln * * * and I do my work in my Volkswagen. Never had any engine trouble with either car * * * and I give STP Oil Treatment a lot of credit for that. This Volkswagen has nearly 262,000 miles on it and it's still going great. Did you know, with the help of STP, that's more than a quarter of a million miles.

7. I'm a firm believer in STP Oil Treatment. Ever since I bought my car new, I've had STP in the crankcase * * * and that's over 170,000 miles without engine trouble. It [sic] would still be driving today except for the damage in the front end.

8. Last year's Indy winner and U.S. National Champion Mario Andretti talks about auto racing and his plans for the future. [Mario]: Driving cars for a living is exciting, but its [sic] also very demanding. There's plenty to do without having to think about mechanical failure. That's why I rely on STP Oil Treatment to keep everything running smoothly.

9. THIS WINTER, KEEP YOUR OIL UP ALL NIGHT. Your engine won't say no to you in the morning, if you let STP Oil Treatment go to work for you at night. You see, oil alone, even all-weather oil, drains off the cylinder walls, pistons and other vital parts and runs down in the oil pan where it stiffens from the cold * * * STP helps your motor oil cling. No matter how long your car sits or how cold it gets. And you get the lubrication you need right from the start.

10. WINTERIZE YOUR OIL. Your car isn't really winter-weather-ready unless you've winterized your motor oil with STP. Let any car sit awhile — like overnight — and the oil, even all-weather oil, drains off the cylinder walls, pistons and other vital parts and runs down in the oil pan where it stiffens from the cold. So in the morning, there isn't always enough lubrication left on crucial parts to let the engine turn over easily without friction and wear. STP helps your motor oil stay up without draining down. No matter how long your car sits or how cold it gets. And you get the lubrication you need right from the start.

11. STP Oil Treatment is so rich and strong it won't drain off vital engine parts the way ordinary motor oil alone does.

12. Unlike ordinary motor oils, STP Oil Treatment clings to vital engine parts.

13. NON-FRICTION BEST SELLER * * *. The engine of your new car is subject to more friction and wear in the first 1000 miles than it is in the 10,000 miles that follow. How do you cut the friction that grinds away at engine life? Motor oil alone doesn't cut it, in our book. But STP blended with your favorite oil, does. STP, world's best-selling oil treatment, is so rich and strong it won't drain off engine parts or break down, the way ordinary motor oils alone do.

14. NEW CAR INSURANCE ONLY \$1.35. The first few miles of driving a new car may be the most fun for you. But they're the toughest for your engine * * * (P)rotect your investment by adding STP to the motor oil right from the start. STP Oil Treatment is so rich and strong it won't drain off vital engine parts the way ordinary motor oil alone does. By keeping harmful friction and wear out, STP coverage keeps your engine's youthful spirit in * * * for years.

15. A racing engine and your engine have some things in common. Heat. Friction. And wear. On the track, winning drivers like Mario Andretti rely on the strong, silent treatment that helps prevent these hazards: STP Oil Treatment. Strong because STP gives motor oil the added film strength it needs to stand up under heat and pressure. Fights damaging friction and wear like motor oil alone never could.

16. You've spent three grand or more on a sleek, suped-up, sporty car. Protect your investment. Add STP to your motor oil. At high speeds, new engines, especially high performance engines, are subject to friction that can cause metal breakdowns * * *. STP cuts the friction. Cuts the wear. Cuts it like no ordinary motor oil alone can * * *.

17. Nothing can wear down an engine's vital moving parts like friction and heat. Damage valves and rings. Bring the life cycle of any engine to a grinding halt. But you can kick that whole route with STP Oil Treatment. STP clings to metal parts better than ordinary motor oil alone. So mile after mile, your machine's engine gets all the extra lubrication it needs to cut friction to a fraction * * *.

18. [Television advertisement showing spacecraft heading for the moon, and an Indianapolis race car]. *Annrc.*: What do these two vehicles have in common? They're both the product of long years of scientific testing. They both require special care; special fuel and special lubrication. And your family car isn't any different. It needs special lubrication to protect its vital engine parts from everyday friction and wear. It needs STP Oil Treatment * * *.

19. IT'S NOT YOUR BATTERY THAT'S RUN DOWN, IT'S YOUR OIL. Your battery's not always to blame for hard winter starts. The real winter villain is probably your oil. You see, ordinary motor oil drains off and runs down to a pan — where it stiffens from the cold. Result? When you try to start your car, the engine doesn't have sufficient lubrication to turn over. So you overworrrrrk the battery 'til you, yourself, run it down. The answer — STP Oil Treatment. Unlike ordinary motor oils, STP Oil Treatment clings to vital engine parts. Gives you the lubrication you need to start up faster all winter long.

20. That summer drive is restful for you. But the pace wears your engine thin. You drive faster, farther, hotter than at any other time of the year. Which can cause ordinary motor oil to break down. Result: extreme heat on metal parts. Then engine wear. Then engine damage. Unless, of course, you use our cooling engine tonic: STP Oil Treatment. STP is so super-concentrated it clings to crucial parts, no matter how many miles you rack up in a day.

21. Watch out! Those wild beasts of heat, friction and wear can claw apart engine parts. You need extra protection against those mill-eating predators. The extra protection of STP Oil Treatment. STP lubricates better than regular motor oil alone. Helps your engine endure ferocious attacks * * * On dirt. On hard stuff. Load your machine with STP while you still can. It's survival of the fittest.

22. [Television demonstration] *Annrc.*: On the left, Jesse Takamiyama, biggest and most popular sumo wrestler in all Japan * * * he's come here to challenge Andy Granatelli in a test of strength. [Advertisement shows Granatelli and Takamiyama arm wrestling] *SFX*: GRUNTS OF EXERTION. [Shows Granatelli acknowledging Takamiyama's strength with a grin]. *Andy*: no wonder you're champ! Next contest, I choose the weapons. [Shows Takamiyama dipping a screwdriver tip into a can labelled "motor oil"]. *Andy*: Put it in there. And try to hang on! [Shows Takamiyama holding onto oil-coated screwdriver tip with no effort]. *Jesse*: It's very easy, Andy. *Andy*: I know. Now the *real* test (emphasis original). [Shows Takamiyama putting screwdriver tip in STP Oil Treatment can]. *Annrc.*: STP Oil Treatment is slipperier than motor oil alone * * * so this time, Andy should do better. *SFX*: CLANG! [Shows Takamiyama unable to hold onto screwdriver] *Andy*: You can't win them all, Jesse. [Shows Takamiyama returning to try again and again]. *SFX*: CLANG!

23. [Television demonstration, with voice of Mike Maertens, Nora Springs, Iowa]: Dear STP — Our mass media class at Nora Springs * * * High School has been conducting tests on a number of products. We chose to test STP Oil Treatment when we saw your commercial. We dipped a screwdriver in motor oil and found we could hang on. Then we repeated the procedure with STP and found we could not hang on * * * which proves STP is slipperier than motor oil alone. In conclusion, we found your product is as advertised.

24. ANTI-FREEZE FOR OIL. Short of Antarctica, all-weather oil doesn't really freeze. But tell that to your no-go car some cold winter morning when the oil is so still in the pan it can't get up in time to help turn over the engine. Or save your breath (and

battery) by adding STP to the oil at your favorite gas station. STP Oil Treatment stays up all night * * * Lubricates you off to a racing start better than oil alone can. * * * Maybe it did startle you to learn there's an antifreeze for oil * * * [Advertisement pictures an engine covered with snow and icicles, with a match being lit under the engine].

B. STP GAS TREATMENT

1. STP Gas Treatment cleans and tunes your engine as you drive. Restores all the pep and power you expect from that four-wheel flame. Next time you fill 'er up, try STP Gas Treatment in your tank. If that doesn't light her fire, nothing will.

2. *Now* when you add it to your gas it cleans your spark plugs better, it cleans your carburetor better * * * so you're cleaning and tuning your engine as you drive. [emphasis in original].

3. Indianapolis, May 30 * * * Mario Andretti's car endured more punishment than your car's engine encounters in a lifetime * * * (A)nd STP Gas Treatment helped him get the mileage he needed to finish, kept his fuel system clean and trouble free, kept his engine tuned as he drove * * *.

4. If STP products worked so well for Mario Andretti, think what they'll do for your own family car * * *. (A)dd a can of STP Gas Treatment to your fuel today to clean your fuel system, tune your engine as you drive and give you the go-power that helped Andretti win the 500.

5. STP * * * cleans and tunes your engine as you drive * * * You'll feel the difference with the very first can.

6. [Television advertisement, audio portion]. *Charley*: Hey, Bill, get rid of that clunker yet? *Bill*: No, its running great now. C'n hardly believe it * * * (P)ut some new stuff in the tank * * * This is somethin' different. STP Gas Treatment. It's like a complete motor tune-up. * * * (K)now the best part, Charley. I was thinkin' of sellin' that car. And I fixed it fine * * * for only 65 .

7. Add it to your fuel and it eliminates power-robbing deposits of gun and varnish. Cleans and tunes your engine as you drive.

8. [Voice of Andy Granatelli, from audio portion of television advertisement]: Gentlemen, clean your engines. You'll really feel the difference.

9. Just add a can to your gasoline and, right away, it starts cleaning up on engine deposits.

C. STP Dual Oil Filter

1. STP Double Oil Filter. A filter in a filter to double clean your oil.

2. Two separate filters working together for dual filtration.

3. Because we utilize two filters, instead of just one, the STP Double Oil Filter is a lot less likely to clog.

4. The STP Internal Differential Pressure Valve * * * control(s) the amount of oil flow through the two filters depending on engine and weather demands.

5. [From audio portion of television advertisement]: ANDY GRANATELLI: You're looking at a rotary engine. We're testing the double oil filter on it now * * * because I believe the Wankel Rotary Engine will power the cars of tomorrow. Meanwhile, get the STP Double Oil Filter for your present car. Not just a single filter on it like the three leading brands, but a filter * * * [sound effects] * * * in a filter [showing one filter being inserted inside another] for extra protection. Next oil change, ask for the STP Double Oil Filter. A filter in a filter to double clean your oil.

6. STP Corporation unconditionally guarantees this filter. It meets or exceeds all

listed American automobile manufacturers' original equipment and/or warranty specifications.

PAR. 5. By and through the use of the statements, representations, and demonstrations set out in Paragraph Four above, and others of similar import not specifically set out herein, respondents have represented and are now representing that:

STP OIL TREATMENT

1. Every car needs STP Oil Treatment in order to obtain adequate protection against friction and wear; [see particularly Paragraph Four, subparagraphs A 13-18];

2. Every motor oil requires the addition of STP Oil Treatment in order to provide adequate engine lubrication; [see particularly Paragraph Four, subparagraphs A 9-21];

3. STP Oil Treatment makes every car which uses it easier to start in cold weather; [see particularly Paragraph Four, subparagraphs 9, 10, 19, 24];

4. STP Oil Treatment eliminates friction and wear in an automobile engine; [see particularly Paragraph Four, subparagraphs A-14];

5. The use of STP Oil Treatment will prevent every car which uses it from breaking down or requiring engine repairs; [see particularly Paragraph Four, subparagraphs A 1-8];

6. The screwdriver television demonstration proves that STP Oil Treatment mixed with motor oil will lubricate engines better than motor oil alone; [see particularly Paragraph Four, subparagraphs A 22];

STP GAS TREATMENT

7. STP Gas Treatment will provide a complete engine tune-up, or the equivalent of a complete engine tune-up, as the car is driven; [see particularly Paragraph Four, subparagraphs B 1-7];

8. STP Gas Treatment will clean the entire engine; [see particularly Paragraph Four, subparagraphs B 1-8];

STP DUAL OIL FILTER

9. The STP Dual Oil Filter meets or exceeds all automobile manufacturers' original equipment specifications for oil filters; [see particularly Paragraph Four, subparagraph C 6];

10. The motor oil flows consecutively through two separate filters, and therefore receives two separate cleanings, each time it passes through the STP Dual Oil Filter [see Paragraph Four, subparagraphs C 1-5].

PAR. 6. In truth and in fact:

STP OIL TREATMENT

1. Every car does not need STP Oil Treatment in order to obtain adequate protection against friction and wear.
2. Every motor oil does not require the addition of STP Oil Treatment in order to provide adequate engine lubrication.
3. STP Oil Treatment does not make every car which uses it easier to start in cold weather.
4. STP Oil Treatment does not eliminate friction and wear in an automobile engine.
5. The use of STP Oil Treatment will not prevent every car which uses it from breaking down or requiring engine repairs.
6. The screwdriver television demonstration does not prove that STP Oil Treatment mixed with motor oil will lubricate engines better than motor oil alone.

STP GAS TREATMENT

7. STP Gas Treatment will not provide a complete tune-up or the equivalent of a complete tune-up, as the car is driven.
8. STP Gas Treatment will not clean the entire engine.

STP DUAL OIL FILTER

9. The STP Dual Oil Filter does not meet or exceed all automobile manufacturers' original equipment specifications for oil filters.
10. The motor oil does not flow consecutively through two separate filters, and does not therefore receive two separate cleanings, each time it passes through the STP Dual Oil Filter.

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

PAR. 7. In the course and conduct of its business as aforesaid, and at all times mentioned herein, respondent STP Corporation has been, is now in substantial competition in commerce with corporations, firms and individuals in the sale of additives and other automotive products of the same general kind and nature as those sold by respondent STP Corporation.

In the course and conduct of its business as aforesaid, and at all times mentioned herein, respondent Stern, Walters & Simmons has been and is now in substantial competition in commerce with corporations, firms, and individuals in the business of rendering advertising services.

PAR. 8. The use by respondents of the aforesaid false, misleading and

deceptive statements, representations, and demonstrations 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, representations, and the demonstrations were and are true and into the purchase of substantial quantities of STP Corporation products, by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

1. Proposed respondent STP Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1400 W. Commercial Blvd., Fort Lauderdale, Florida.

2. Proposed respondent Stern, Walters & Simmons, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 150 E. Huron St., Chicago, Illinois.

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

ORDER

A

It is ordered, That respondents STP corporation, and Stern, Walters & Simmons, Inc., corporations, and their officers, successors, assigns, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device:

1. In connection with the advertising, offering for sale, sale, or distribution of STP Oil Treatment, or any other product the customary or usual use of which is as an additive to motor oil, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product:

- a. Prevents cars which use it from experiencing mechanical breakdowns or from requiring repairs;
- b. Cures or remedies mechanical malfunctions;
- c. Eliminates friction or wear or is required to protect against friction or wear;
- d. Acts or performs like or has the effect of antifreeze in the oil; or will enable cars to start, or to start more easily, in cold weather;
- e. Is required in order to obtain lubrication from motor oil;
- f. Is slipperier than motor oil alone.

2. In connection with the advertising, offering for sale, sale, or distribution of STP Oil Treatment, or any other product the customary or usual use of which is as an additive to motor oil, or which is advertised for such use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the capacities, characteristics, or qualities of motor oil or of any grade or weight of motor oil.

B

It is further ordered, That respondents STP Corporation, and Stern, Walters & Simmons, Inc., corporations, and their officers, successors, assigns, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device in connection with

the advertising, offering for sale, sale or distribution of STP Gas Treatment, or any other product the customary or usual use of which is as an additive to gasoline, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product:

1. Tunes an engine, or will provide the equivalent of a complete engine tune-up, or makes engine tune-ups unnecessary;
2. Provides any portion of an engine tune-up unless, in immediate conjunction therewith, respondents disclose, clearly and conspicuously, that the advertised product does not provide all of the features of a mechanical engine tune-up;
3. Cleans or helps to clean an entire engine without clearly designating the component or components or functional areas of the engine or other portions of the motor vehicle which are affected.

C

It is further ordered, That respondents STP Corporation, and Stern, Walters & Simmons, Inc., corporations, and their officers, successors, assigns, 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 oil filters in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Representing, directly or by implication, that any such product:
 - a. Meets, conforms with, or exceeds any automotive manufacturers' specifications, or is approved by any automobile manufacturer for use in connection with any vehicle or engine, when such is not the fact;
 - b. "Double cleans" motor oil, or representing in any other manner that any such product filters motor oil more than once each time the oil flows through the filter cannister except as provided in paragraph 2, immediately below, unless the motor oil flows through two or more filtering elements in series each time the motor oil flows through the filter cannister.
2. Using the words "dual," "double," "double stage," "two filters in one," "two stage," "filter within a filter," or any other terminology which suggests the presence of more than one filtering element, to describe any automotive oil filter without clearly disclosing that the motor oil is filtered only once each time it flows through the filter cannister, unless the motor oil flows through two or more filtering elements in series each time the motor oil flows through the filter cannister. In television advertising, the disclosure that motor oil may be filtered only once each time it flows through the filter cannister when

such is the fact shall be made in such a manner that it is clearly disclosed.

D

It is further ordered, That respondents STP Corporation and Stern, Walters & Simmons, Inc., corporations, and their officers, successors, assigns, 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 STP Oil Treatment, or any other product the customary or usual use of which is as an additive to motor oil, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating any advertisement in which a representation of benefit is made as to such product when used as an additive to motor oil unless (1) such representation is true; (2) respondent STP Corporation possesses and relies upon, prior to the time such representation is first made, a competent and reliable scientific test or tests or other objective data which substantiate such representation; or (3) with respect to respondent Stern, Walters & Simmons, Inc., respondent possesses and relies upon, prior to the time such representation is first made, a reasonable basis for such representation which shall consist of an opinion in writing signed by a person qualified by education and experience to render such an opinion (who, if qualified by education and experience, may be a person retained or employed by respondent's client) that a competent and reliable scientific test or tests or other objective data exist to substantiate such representation; *provided* that any such opinion also discloses the nature of such test or tests or other objective data and *provided further* that respondent neither knows, nor has reason to know, nor upon reasonable inquiry could have known, that such test or tests or other objective data do not in fact substantiate such representation or that any such opinion does not constitute a reasonable basis for such representation.

E

It is further ordered, That respondents STP Corporation and Stern, Walters & Simmons, Inc., corporations, and their officers, successors, assigns, 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 STP Oil Treatment, STP Gas Treatment, STP Oil Filters, or any other product manufactured, sold or distributed by STP Corporation the customary or usual use of which is as an additive to motor oil or gasoline or as an

oil filter, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Advertising by or through the use of or in conjunction with any test, experiment, or demonstration or the result thereof, or any other information or evidence that appears or purports to confirm or prove, or is offered as confirmation, evidence, or proof of any fact, product characteristic or the truth of any representation, which does not accurately demonstrate, prove or confirm such fact, product characteristic, or representation.

2. Using any pictorial or other visual means of communication with or without an accompanying verbal text which directly or by implication creates a misleading impression in the minds of viewers as to the true state of material facts which are the subject of said pictures or other visual means of communication.

3. Misrepresenting in any manner or by any means any characteristic, property, quality, or the result of use of any such product.

It is further ordered, That respondents STP Corporation and Stern, Walters & Simmons, Inc., shall forthwith distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives or employees engaged in the creation or approval of advertisements.

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

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

Commissioner Hanford dissented on the grounds that the order is too weak and that STP should be explicitly required to qualify its future claims.

Complaint

87 F.T.C.

IN THE MATTER OF

PARKER ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2778. Complaint, Jan. 12, 1976—Decision, Jan. 12, 1976*

Consent order requiring a Palos Verdes Peninsula, Calif., advertising agency, among other things to cease representing that any automobile tire has any safety or performance characteristic or is superior in quality or performance to other tires; and making any generalized safety claims, such as "security." Further, respondent is required to have a "reasonable basis" in substantiation of claims regarding the safety or performance characteristics of any automobile product.

Appearances

For the Commission: *Bruce Parker.*

For the respondent: *Anthony Liebig, Lillick, McHose & Charles, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Parker Advertising, 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 Parker Advertising, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its principal offices and place of business located at 609 Deep Valley Dr., Palos Verdes Peninsula, California.

PAR. 2. Respondent Parker Advertising, Inc. has been, and now is, an advertising agency of Bridgestone Tire Company of America, Inc., and has prepared and placed for publication advertising material, including but not limited to the advertising referred to herein, to promote the sale of the RD-170V steel belted radial tire, an automobile passenger tire sold and distributed by Bridgestone Tire Company of America, Inc.

PAR. 3. In the course and conduct of its business, respondent Parker Advertising Inc., has disseminated, and caused the dissemination of advertisements concerning the aforementioned product by various means in or affecting commerce, including but not limited to, advertisements printed in magazines and newspapers distributed by

the mail and across State lines, and transmitted by television and radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product.

PAR. 4. Among the advertisements so disseminated or caused to be disseminated by respondent is a print advertisement attached as Exhibit A.

PAR. 5. Through the use of the aforesaid statements and representations made in Exhibit A, respondent represented and is now representing, directly or by implication, that the RD-170V steel-belted radial tire is the best radial tire in America.

PAR. 6. At the time respondent made the representation as alleged in Paragraph Five, respondent did not possess and rely on a reasonable basis consisting of steel-belted radial tire is superior in terms of overall performance to all other radial tires in America. Therefore, the making of said representation as alleged in Paragraph Five constituted, and now constitutes, an unfair and deceptive act or practice in and affecting commerce.

PAR. 7. Further, through the use of the aforesaid statements and representations made in Exhibit A, respondent represented and is now representing, directly or by implication, that the RD-170V steel-belted radial tire is superior to all other radial tires in America with respect to the following characteristics:

1. Puncture protection;
2. Cornering and stopping; and
3. Gas mileage.

PAR. 8. Further, through the use of the aforesaid statements and representations made in Exhibit A respondent represented and is now representing, directly or by implication, that the RD-170V steel-belted radial tire provides a degree of long-run security and comfort that is rare in all other radial tires in America.

PAR. 9. At the time respondent made the statements and representations as alleged in Paragraphs Seven and Eight, respondent did not possess and rely on a reasonable basis consisting of competent scientific tests for making said statements and representations as herein alleged constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Parker Advertising, Inc., has been, and now is in substantial competition in or affecting commerce with other advertising agencies.

PAR. 11. The use by respondent of the aforesaid false, misleading,

deceptive or unfair statements and representations as alleged herein, and the dissemination of the aforesaid unfair or deceptive advertisements, has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of the RD-170V steel-belted radial tire sold and distributed by Bridgestone Tire Company of America, Inc. Further, as a result thereof, substantial trade is being unfairly diverted to respondent Parker Advertising, Inc., from its competitors.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of unfair or deceptive advertisements, were and are all to the prejudice and injury of the public and of respondent Parker Advertising, Inc.'s competitors, and constituted and now constitute, unfair and deceptive acts or practices and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

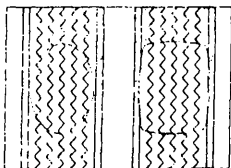
EXHIBIT A

The best radial tire in America?

Now that radial rather than ordinary bias ply tires are becoming the safer-driving standard for thoughtful motorists, just what does it take to be tops in this radial revolution?

Among other things, superior wear—up to 40,000 miles or better. First rate puncture protection. Superior cornering and stopping. A quiet, comfortable ride and noticeably better gas mileage. And a price that keeps the cost per tire mile down in the mini-digits.

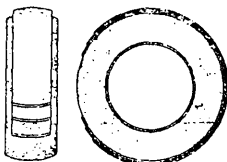
Bridgestone designed its RD-170V steel belted radial to meet all these requirements.



In our research laboratories, we found the right rubber compounds and tread to guarantee 40,000 easy-riding miles with a good

grip on all kinds of pavement. Then Bridgestone built a special radial tire factory.

For puncture protection we incorporated three steel belts (from our own steel cord



plane) instead of the usual two. They girdle the tire, hold the tread traction-firm and reduce tread-wearing squirm.



Additional fabric plies running straight across the



The time-honored quality tire. —

bead at a 90 degree angle work in parallel to permit maximum flexing without sawing or grinding.

Bridgestone's special combination of resilient fabric plies with girdling steel belts provides a rare degree of long-run security and comfort.

Among 3,200 types of Bridgestone tires do we build the best radial in America? You be the judge. Visit your Bridgestone dealer today.



Check the Yellow Pages for your local Bridgestone Tire Dealer.

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 enters the following order:

1. Respondent Parker Advertising, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its principal offices and place of business located at 609 Deep Valley Dr., Palos Verdes Peninsula, California.

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 Parker Advertising, Inc., a corporation, its successors and assigns, officers, representatives, agents, employees, directly through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any automobile tire has any safety or performance characteristic or is superior in quality or performance to other tires, either overall or with respect to any such characteristic, unless at the time such representation is first disseminated respondent has a reasonable basis for such representation based on competent scientific tests in the possession of respondent or its client, and respondent has relied upon such tests. *Provided, furthermore,* That with respect to any representation concerning the safety of automobile tires which representation is not expressly limited to a specific safety characteristic(s), the basis for such a representation shall include, at the minimum, tests for the following characteristics: (a) stopping; (b) cornering; (c) puncture protection; and (d) high speed performance.

2. Failing to maintain in conjunction with Paragraph One of this order, all test results, data, and information which come into its possession and which constitute a basis for said representation, all of which shall be available in written form for inspection, upon reasonable notice, for at least three years following the final use of the representation.

3. Making any representation, directly or by implication, regarding the safety or performance characteristics of any automotive product, unless at the time such representation is first disseminated respondent has a reasonable basis for such representation in the possession of respondent or its client, and respondent has relied upon such basis. *Provided, however,* That with respect to automobile tires, the only reasonable basis for such a representation shall be competent scientific tests as specified in Paragraph One of this order.

4. Failing to provide for the maintenance of, in conjunction with Paragraph Three of this order, all test results, data, and information which come into its possession and which constitute a basis for said representation, all of which shall be available in written form for inspection, upon reasonable notice, for at least three years following the final use of the representation.

II

It is further ordered, That for the purpose of Paragraph One of Part I of this order:

1. A claim of "security" shall be construed as a safety claim in connection with automobile tires.

2. A representation as to the quality or performance characteristics of any automobile tire implies that it is superior in quality or performance to any other automobile tire or all other automobile tires if it is phrased in the comparative or superlative degree, or if any

advertising contained such representation conveys a net impression of comparative superiority.

III

It is further ordered, That respondent Parker Advertising, Inc., shall forthwith deliver 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 that may affect the compliance obligations arising out of the order.

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

Modifying Order

IN THE MATTER OF
KOSCOT INTERPLANETARY, INC., ET AL.MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE
CLAYTON ACT

Docket 8888. Decision, Nov. 18, 1975—Modifying Order, Jan. 13, 1976

Order modifying an earlier order dated Nov. 18, 1975, 40 F.R. 60044, 86 F.T.C. 1106, by deleting Paragraph VI requiring Koscot Interplanetary, Inc. to deliver copies of Section II of order to salespersons, franchisees, and distributors of their products and services; and requiring respondent to secure signed statements acknowledging each party's receipt of said copies.

Appearances

For the Commission: *Quentin P. McColgin* and *David D. Keehn*.
For the respondents: *Kenneth M. Robinson*, Washington, D.C.

ORDER MODIFYING FINAL ORDER

Respondent Koscot Interplanetary, Inc. has petitioned for reconsideration of the Commission's order issued November 18, 1975. Respondent asks that Paragraph VI be deleted. This paragraph requires circulation of certain portions of the order to those who undertake to distribute respondent's cosmetics. Complaint counsel oppose the petition, arguing that counsel for respondent in the administrative proceeding before the Commission had full opportunity to object to Paragraph VI, but instead indicated to the Commission at oral argument that he had no objection to those portions of the administrative law judge's order not dealing with restitution.

Ordinarily the Commission will not reconsider an issue where there has previously been an opportunity for the issue to be argued before the Commission (Rules of Practice, Section 3.55). However, the Commission may modify its order in appropriate circumstances (Section 3.72). Given the circumstances recited in petitioner's letter we will grant the request that Paragraph VI of the order of November 18, 1975, be deleted as to petitioner Koscot Interplanetary, Inc.

Respondent has also expressed uncertainty as to the meaning of Paragraph VII of the order. This is a standard reporting provision included in all Commission orders. It merely requires that the Commission be informed of any change in the corporation which might affect its compliance with an order. Such changes might include dissolution or sale to a new owner. At such time as the order in this matter becomes final, staff of the Commission in charge of compliance

Modifying Order

87 F.T.C.

will assist respondent to interpret the foregoing or any other paragraph of the order, as it applies to respondent's current operations.

Therefore,

It is ordered, That Paragraph VI of the Commission's order of November 18, 1975, in this matter shall be, and it hereby is, stricken as to respondent Koscot Interplanetary, Inc.

Complaint

IN THE MATTER OF

A. SOLOFF & SON, INC., ET AL.

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

Docket C-2779. Complaint, Jan. 13, 1976—Decision, Jan. 13, 1976

Consent order requiring a Fall River, Mass., manufacturer of woolen apparel, among other things to cease misbranding and mislabeling the fiber content of its woolen products.

Appearances

For the Commission: *James S. Parker.*

For the respondents: *Paul S. Horvitz, Horvitz & Horvitz, Fall River, Mass.*

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 A. Soloff & Son, Inc., a corporation, and Merrill Leviss, 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 A. Soloff & Son, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1 Ace St., Fall River, Massachusetts.

Individual respondent Merrill Leviss is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter set forth.

Respondents are engaged in the manufacture and sale of wool products including but not limited to men's and children's outerwear.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale in commerce, as "commerce" is defined in the Wool

Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 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 men's and children's outerwear which were stamped, tagged, labeled, or otherwise identified as containing "80% Wool, 20% Polyester" whereas, in truth and in fact, such wool products contained substantially different fibers and 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 men's and children's outerwear which failed to have labels on or affixed thereto showing the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool fibers; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool when said percentage by weight of such fiber was five per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. 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 draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 of the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent A. Soloff & Son, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 1 Ace St., Fall River, Massachusetts.

Respondent Merrill Levis is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

Respondents are engaged in the manufacture and sale of wool products including but not limited to men's and children's outerwear.

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 A. Soloff & Son, Inc., a corporation, its successors and assigns and its officers, and Merrill Levis, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture for introduction into commerce, 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.

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 deliver a copy of this order to cease and desist 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 the 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
CIRCULATION BUILDERS, INC., T/A PUBLISHERS
SERVICE COMPANY OF CALIFORNIA, ET AL.

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

Docket 9004. Complaint, Jan. 7, 1975—Decision, Jan. 14, 1976

Consent order requiring a Sausalito, Calif., company engaged in door-to-door sales of books and periodicals, among other things to cease misrepresenting and failing to disclose material facts in soliciting people for employment as sales agents; failing to obtain all required licenses or other permits prior to doing business in any jurisdiction; misrepresenting and failing to disclose material facts in selling subscriptions for magazines, books or other publications which respondents have no authority to sell or which respondents cannot cause to be delivered. Respondents are further required to make full refunds to all consumers who have dealt with them since Jan. 1, 1974.

Appearances

For the Commission: *Ralph E. Stone* and *Paul D. Hodge*.

For the respondents: *Stephen M. Koolpe*, Mill Valley, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Circulation Builders, Inc., a corporation, doing business as Publishers Service Company of California and Harold J. Gutknecht and Gerald Gutknecht, individually and as officers 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 Circulation Builders, Inc., doing business as Publishers Service Company of California, 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 691 Bridgeway, Sausalito, California.

Respondent Gerald Gutknecht 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.

Respondent Harold J. Gutknecht is an individual and was an officer of the corporate respondent. He formulated, directed and controlled the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is 689 Bridgeway, Sausalito, California.

PAR. 2. Respondents are now, and for some time last past have been engaged in the sale of magazine subscriptions and other publications to the purchasing public by either of two methods which are commonly referred to as "cash subscription" and "two-payment."

Respondents enter into business arrangements with certain magazine subscription clearing companies, publishers or distributors of magazines and other publications whereby the magazine subscription clearing companies, publishers or distributors agree to accept and fill orders for designated magazines or other publications sold by respondents. The magazine subscription clearing companies, publishers or distributors generally require that the magazines or other publications be sold for a designated amount and that respondents forward an agreed upon amount to the magazine subscription clearing companies, publishers or distributors thereof.

Pursuant to such arrangements the respondents are now, and for some time last past have been engaged in the solicitation and selling of magazine subscriptions to the purchasing public.

PAR. 3. In the course and conduct of their business of selling magazine subscriptions pursuant to subscription contracts, as aforesaid, respondents have entered into contractual arrangements with magazine subscription clearing companies, publishers, or distributors of magazines whereby respondents are authorized to sell certain magazine subscriptions at designated selling prices and to pay designated amounts to said magazine subscription clearing companies, publishers, or distributors as payment for said subscriptions. Respondents are thereby given authority to sell subscriptions to some but not all magazines and other publications.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents enter, and have entered, into agreements with individuals known as "crew managers or chiefs," herein "crew-chiefs," who in turn employ or hire "sales agents," "solicitors," or other representatives to sell said magazines.

Acting through their said crew chiefs and solicitors, respondents place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sale methods whereby members of the general public are contacted by door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced

to sign subscription contracts with respondents which provide for the purchase of magazines or other publications and payment therefore usually on a cash or two-payment basis.

Respondents also provide crew chiefs with credentials, sales contract forms, magazine lists and other printed materials some of which bear the name and address of the corporate respondents. Said printed materials are placed in the hands of respondents' sales solicitors for use in the solicitation of magazine subscriptions.

The subscription contracts, when signed by the subscriber, are thereafter returned by the sales solicitor and the crew chief to the respondents who place subscription orders with the appropriate magazine subscription clearing company, publisher and distributor for magazines and other publications respondents are authorized to sell.

In the manner aforesaid, respondents, directly or indirectly, through said crew chiefs control, furnish the means, instrumentalities, services and facilities for, condone, approve and accept the pecuniary benefits flowing from the acts, practices and policies hereinafter set forth, of said crew chiefs and sales solicitors, hereinafter collectively referred to as respondents' representatives or solicitors.

PAR. 5. In the course and conduct of their business and in the manner aforesaid, respondents through their representatives or solicitors, who travel from one area to another, solicit subscriptions for magazines in various States of the United States. Respondents transmit and receive in commerce the aforementioned printed materials used in the solicitation and sale of magazine subscriptions. The subscription contracts and money are sent by said representatives or solicitors from various States to respondents' place of business in the State of California and then forwarded by respondents to various magazine subscription clearing companies, publishers or distributors, many of whom are located in States other than the State of California. Respondents thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondents, in the course and conduct of their business as aforesaid, have disseminated, and now disseminate or cause to be disseminated, classified advertisements in newspapers of general and interstate circulation and in newspapers throughout the United States, and have made statements and representations respecting pay and working conditions, designed and intended to induce individuals to apply as representatives or solicitors to sell magazine subscriptions on the behalf of respondents.

Among and typical of such statements but not all inclusive thereof, are the following:

ATTENTION, GALS - TRAVEL

HAVE OPENING FOR SEVERAL NEAT PERSONS OVER 17 TO PLACE IN NATIONAL TRAVEL PROGRAM IN PUBLISHING COMPANY. NO EXPERIENCE OR EDUCATIONAL REQUIREMENTS. ALL EXPENSES PAID DURING TRAINING PROGRAM. TRANSPORTATION FURNISHED. CASUAL CONDITIONS AND HIGH PAY. MUST BE ABLE TO LEAVE AT ONCE FOR TRAVEL THROUGHOUT THE CONTINENTAL U. S. A., HAWAII AND PUERTO RICO. FOR INTERVIEW, APPLY TO MR. SANCHO, DOWNTOWN HOLIDAY INN, 10:00 A.M. UNTIL 5:00 P.M. FRIDAY ONLY, OR CALL 422-4111.

In the aforesaid manner, the respondents have represented, and are now representing, directly or by implication, that:

1. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will travel on a planned itinerary to various large cities and resort areas throughout the United States and its territories.

2. Respondents will pay the expenses of persons who answer respondents' advertisements and who become representatives or solicitors for respondents.

3. All persons who answer respondents' advertisements and who become representatives or solicitors for respondents have the potentiality and reasonable expectancy of receiving large profits or earnings.

4. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will be working for a publishing company.

PAR. 7. In truth and in fact:

1. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents do not travel on a planned itinerary to various large cities and resort areas throughout the United States and its territories.

2. Respondents do not pay the expenses of persons who answer respondents' advertisements and who become representatives or solicitors for respondents.

3. All persons who answer respondents' advertisements and who become representatives or solicitors for respondents do not have the potentiality and reasonable expectancy of receiving large profits or earnings.

4. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will not be working for a publishing company.

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

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their magazine subscriptions, respondents and respondents' representatives or solicitors have represented, and now represent, directly or by implication, that:

1. Respondents' representatives or solicitors are authorized to sell subscriptions for and are able to deliver or cause the delivery of all magazines for which they sell subscriptions and accept payments.

2. Respondents' representatives or solicitors are participants in a "contest" working for prizes and awards and are not solicitors working for money compensation.

3. Respondents' representatives or solicitors are employed by or for the benefit of a charitable or non-profit organization.

4. Respondents' representatives or solicitors are college students working their way through school.

5. Respondents' representatives or solicitors are "bonded" and that such "bonding" insures their honesty and integrity.

6. Respondent has a legal arrangement with an independent third party which insures the placement and fulfillment of each and every magazine subscription order.

7. Respondents guarantee the delivery of magazines for which they sell subscriptions and accept payments.

8. The money paid by the subscriber to the respondents' representative or solicitor at the time of the sale is the total cost of the subscription.

PAR. 9. In truth and in fact:

1. Respondents are not authorized to sell subscriptions for and are not able to deliver or to cause the delivery of all magazines for which their representatives or solicitors sell subscriptions and accept payments. In many instances, respondents' representatives or solicitors sell subscriptions for magazines which respondents are not authorized by the publisher or distributor thereof to sell, and consequently, respondents are unable to deliver or to cause the delivery of these magazines, for which they have accepted payments from subscribers.

2. Respondents' representatives or solicitors work for money compensation and are not participants in a "contest" working for prizes and awards. The use by respondents and their representatives or solicitors of credentials and promotional materials identifying such representatives or solicitors as participants in a contest is a spurious device which enables their representatives or solicitors to utilize a personal sympathy appeal in the sale of subscriptions.

3. Respondents' representatives or solicitors are not employed by or for the benefit of charitable or non-profit organizations.

4. To the contrary in a substantial number of instances, respon-

dents' representatives or solicitors are not college students working their way through college.

5. Respondents' representatives or solicitors are not "bonded," and there is no assurance for their honesty and integrity.

6. Respondents do not have a legal arrangement with an independent third party which insures the placement and fulfillment of each and every magazine subscription order.

7. Respondents do not guarantee the delivery of magazines for which they sell subscriptions and accept payments and, once the order is submitted to the magazine subscription clearing company, publisher or distributor, no consistent effort is made by respondents to insure such delivery.

8. In a substantial number of instances, the money paid by the subscriber to the respondents' representatives or solicitors at the time of the sale is not the total cost of the subscription. The subscriber is required to pay an additional sum of money before his subscription will be entered as ordered.

Therefore, the representations, acts and practices as set forth in Paragraph Eight hereof, were, and are, unfair practices and are false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business as aforesaid, where respondents have received payment for subscriptions to magazines they are not authorized to sell and are not able to deliver or cause to be delivered, they have also, in a substantial number of instances:

1. Failed to notify subscribers, after subscription orders have been received at their principal office and place of business, that said magazines cannot be delivered.

2. Required purchasers to subscribe to substitute magazines without offering them the option to receive a full refund of the money paid for the initial subscription.

3. Failed to refund to subscribers the money they have paid for subscriptions to such magazines.

4. Failed to answer, or to answer promptly, inquiries by or on behalf of subscribers concerning non-delivery of such magazines.

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

PAR. 11. In the further course and conduct of their business as aforesaid, where respondents have received payment for subscriptions to magazines they are in fact authorized to sell and are able to deliver or cause to be delivered, they have, in many instances, failed to deliver or cause to be delivered such magazines within a reasonable period of time.

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

PAR. 12. In the further course and conduct of their business as aforesaid, in instances where the respondents' representatives or solicitors have appropriated money paid by subscribers to their own use, respondents have either failed to refund to subscribers the money said subscribers have paid for subscriptions to magazines or have failed to enter the subscription as ordered by said subscribers.

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

PAR. 13. In the further course and conduct of their business as aforesaid, respondents, through their representatives and solicitors, have misrepresented, and are now misrepresenting, the cost, number of issues and duration of magazine subscriptions.

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

PAR. 14. By and through the use of the aforesaid acts and practices, respondents place in the hands of the crew chiefs, sales agents, representatives and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 15. The use by respondents of the aforesaid false, misleading, deceptive and unfair representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of magazine subscriptions from respondents.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on January 7, 1975, charging respondents named in the caption hereof with violations of the Federal Trade Commission Act; and

The Commission having withdrawn the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by respondents of

all jurisdictional facts set forth in the aforesaid complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 makes the following jurisdictional findings, and enters the following order:

1. The agreement herein, by and between Circulation Builders, Inc., a corporation, d/b/a Publishers Service Company of California by its duly authorized officer, and Harold J. Gutknecht and Gerald Gutknecht, individually and as officers of said corporation, respondents in a proceeding initiated by the Federal Trade Commission through the issuance of its complaint on January 7, 1975, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedure.

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 respondents Circulation Builder, Inc., a corporation, doing business as Publishers Service Company of California, or under any other name or names, its successors and assigns, and its officers, and Harold J. Gutknecht and Gerald Gutknecht, individually and as officers of said corporation, and respondents' agents, independent contractors, representatives, crew managers, solicitors and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of magazines, magazine subscriptions, books, or other products; or in the recruitment of solicitors or salesmen for said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or indirectly, whether orally, visually, or in writing, to solicitors or representatives or prospective solicitors or representatives of said products that:

(a) They will travel on a planned itinerary to various large cities and resort areas throughout the United States and its territories; or misrepresenting in any manner, the travel opportunities to their representatives or solicitors.

(b) Respondents will pay all, or any part of the expenses of such

solicitors except during a limited training period; or misrepresenting, in any manner, the terms or conditions of employment as a representative or solicitor for respondents.

(c) They will have high earnings or earnings of any stated gross amount; or representing in any manner, the past earnings of respondents' representatives or solicitors, unless in fact the past earnings represented have actually been received by more than 90 percent of respondents' representatives or solicitors and accurately reflect the average earnings of such representatives or solicitors.

(d) They will serve in any capacity other than as magazine, book or other publication subscription solicitors selling magazines, books, or other publications on a door-to-door basis; or misrepresenting in any manner, the terms, conditions, or nature of such employment, or the manner or amount of payment for such employment.

2. Failing clearly and unqualifiedly, to reveal during the course of any contact or solicitation of any prospective employee, sales agent or representative, whether directly or indirectly, or by written or printed communications, or by newspaper or periodical advertising, or person-to-person, that such prospective employee, sales agent or representative will be employed to solicit the sale of magazine, book or other publication subscriptions.

3. Failing to immediately provide any representative or solicitor who has been employed for longer than two weeks and who has given either oral or written notice of termination of employment to respondents with the funds necessary to pay for adequate travel expenses to return to the geographical location where said representative or solicitor was initially solicited for employment by respondents.

4. Failing to keep weekly financial records of income earned and expenses incurred by each representative or solicitor of respondents.

5. Failing to provide each representative or solicitor with a weekly itemized written financial statement of his or her income earned and expenses incurred.

6. Failing to remit weekly to representatives and solicitors monies earned by said representatives and solicitors.

7. Failing to obtain all required licenses or other permits prior to doing business in any jurisdiction.

8. Failing to immediately post bail, pay any fines, attorney's fees, or court costs imposed on any representative or solicitor of respondent as a result of respondents' failure to comply with the provisions of Paragraph 7 above.

9. Soliciting or accepting subscriptions for magazines, books or other publications which respondents have no authority to sell or which respondents cannot promptly deliver or cause to be delivered.

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

(a) Respondents' representatives or solicitors are participants in a contest working for prize awards; or are not solicitors working for money compensation; or misrepresenting, in any manner, the status of their sales agents or representatives or the manner or amount of compensation they receive;

(b) Respondents' representatives or solicitors are employed by or for the benefit of any charitable or non-profit organization; or misrepresenting in any manner, the identity of the solicitor or of his firm or the business that they are engaged in;

(c) Respondents' representatives or solicitors are college students working their way through school;

(d) Respondents' representatives or solicitors are participating in any educational program or that they are competing for educational or trade school awards or scholarships;

(e) Respondents' representatives or solicitors are veterans; or that the sale of magazines, books or other publications is or will be beneficial to veterans or veteran's organizations;

(f) Respondents' sales agents or representatives have been or are bonded, or making any reference to bonding, unless such sales agents or representatives have been bonded by a recognized bonding agency, and any payments made pursuant to such bonding arrangement would accrue directly to the benefit of subscribers ordering subscriptions from respondents' representatives or solicitors; or misrepresenting, in any manner, the nature, terms or conditions of any such bond;

(g) Respondents have a legal arrangement with any independent third party which insures the placement and fulfillment of each and every magazine, book or other publication subscription order; or misrepresenting, in any manner, the nature, terms and conditions of any such arrangement;

(h) Respondents guarantee the delivery of magazines, books or other publications for which they sell subscriptions and accept payments, without clearly and conspicuously disclosing the terms and conditions of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee; and

(i) The money paid by a subscriber to the respondents' representative or solicitor at the time of the sale is the total cost of the subscription in instances where the subscriber will be required to remit an additional amount in order to receive the subscription as ordered.

11. Utilizing any sympathy appeal to induce the purchase of subscriptions, including but not limited to: illness, disease, handicap, race, financial need, eligibility for benefit offered by respondents, or

other personal status of the solicitor, past, present or future; or representing that earnings from subscription sales will benefit certain groups of persons such as students or the underprivileged, or will help charitable or civic groups, organizations or institutions.

12. Failing clearly and conspicuously without any qualification, orally and in writing, to reveal at the outset of any contact or solicitation of a purchaser or prospective purchaser, whether directly or indirectly, or by written or printed communications, or person-to-person, that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the time of such contact or solicitation.

13. Failing within thirty (30) days from the sale of any subscription to notify a subscriber of respondents' inability to place all or part of a subscription and to deliver each of the magazines, books or other publications of other publications subscribed for; and to offer each such subscriber the option to receive a full refund of the money paid for such subscription or part thereof which respondents are unable to deliver or to substitute other publications in lieu thereof.

14. Failing within ten (10) days from the receipt of notification of a subscriber's election to receive a refund as provided in Paragraph 13 hereof, to make the required refund or to enter the subscription with publishers, as elected by the subscriber.

15. Failing to answer and to answer promptly, inquiries by or on behalf of subscribers regarding subscriptions placed with respondents.

16. Failing to arrange for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance.

17. Failing within twenty-one (21) days from the date of the receipt of the final payment to enter subscriptions for each magazine, book, or other publication with publishers which respondents are authorized by the publisher or distributor thereof to sell.

18. Failing to give clear and conspicuous oral and written notice to each subscriber that upon written request said subscriber will be entitled to a refund of all monies paid if he does not receive the magazine, book or other publication subscribed for within 120 days of the receipt of the final payment.

19. Failing within ten (10) days from receipt of written request for a refund by any subscriber to refund all monies to subscribers who have not received magazines, books or other publications subscribed for through respondents within 120 days from the date of receipt of the final payment thereof.

20. Failing to refund to subscribers the money said subscribers have paid for subscriptions to magazines, books or other publications

or, at the election of the subscriber, to enter the subscription as originally ordered in instances where the respondents' representatives or solicitors have appropriated such money to their own use and have failed to enter the subscriptions as ordered by said subscribers, within fourteen (14) days of notice to respondents thereof.

21. Failing to furnish each subscriber at the time of sale of any subscription a duplicate original of the contract, order or receipt form signed by the customer showing the date and the name and street address of the sales representative or solicitor, together with the respondent corporation's name, street address and telephone number and showing on the same side of the page, the exact number and name(s) of the publications being subscribed for, the number of issues and duration of each subscription and the total price for each and all such publications.

22. Misrepresenting the number and name(s) of publications being subscribed for, the number of issues and duration of each subscription and the total price for each and all publications.

23. Furnishing, or otherwise placing in the hands of others, the means or instrumentalities by or through which the public may be misled or deceived in the manner or as to the things prohibited by this Order.

It is further ordered, That respondents do forthwith cease and desist from:

1. Failing to furnish a subscriber, hereinafter referred to as "buyer," with a fully completed receipt or copy of any contract pertaining to any sale totaling any dollar amount at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and street address of the corporate respondent, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

2. Failing to furnish each buyer, at the time he or she signs the door-to-door sales contract totaling any dollar amount or otherwise agrees to buy consumer goods or services totaling any dollar amount from the respondents, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or

81

Decision and Order

receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[*enter date of transaction*]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

IF THE SELLER FAILS TO NOTIFY YOU, WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF YOUR NOTICE OF CANCELLATION OF THE SELLER'S INTENT TO REPOSSESS OR TO ABANDON ANY SHIPPED OR DELIVERED GOODS THEN YOU ARE ENTITLED TO A REFUND AND TO RETAIN SAID GOODS.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [*Name of seller*], AT [*address of seller's place of business*] NOT LATER THAN MIDNIGHT OF [*date*].

I HEREBY CANCEL THIS TRANSACTION.

(*DATE*)

(*Buyer's signature*)

3. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the street address of the corporate respondent's place of business, the date of the transaction, and the date, not earlier than the third business

day following the date of the transaction, by which the buyer may give notice of cancellation.

4. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his or her right to cancel the sale in accordance with the provisions of this order.

5. Failing to inform each buyer orally, at the time he or she signs the contract or purchases the goods or services, of his or her right to cancel.

6. Failing to comply with the terms set forth in the notice in Paragraph 1 above and in the Notice of Cancellation in Paragraph 2 above and misrepresenting in any manner the buyer's right to cancel.

7. Failing or refusing to honor any valid notice of cancellation by a buyer and failing within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any necessary or appropriate action to terminate promptly any security interest created in the transaction; and (iii) allow a buyer to retain any magazine, book or other publication received by said buyer if respondents have failed within said ten (10) day period to notify buyer whether respondents intend to repossess or to abandon any shipped or delivered goods.

8. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

It is further ordered, That respondents do forthwith cease and desist from failing to refund immediately all monies to all persons who subscribe after the effective date of this order and show that respondents' solicitations or performance were attended by or involved violation of any of the provisions of this order.

It is further ordered, That:

1. Gerald Gutknecht and corporate respondent shall refund within six (6) months of notification by subscribers, all monies to persons who have ordered magazines, books or other publications through respondents from January 1, 1970 to the effective date of this order and who have not received said magazines, books or other publications at the address given by said subscribers or who have received magazines, books or other publications they had not ordered, with no obligation on the part of any person to return said magazines, books or other publications not ordered; *provided, however*, that those persons who have ordered magazines, books or other publications 120 days prior to the effective date of this order shall only be entitled to a refund if they

have not received said magazines, books or other publications at the address given by said subscribers within 120 days from date of sale or if they have received magazines, books or other publications which were not ordered, with no obligation on the part of said person to return said magazines, books, or other publications not ordered.

2. Gerald Gutknecht and corporate respondent shall refund within six (6) months of notification all monies to persons who have ordered magazines, books or other publications through respondents from January 1, 1970 to January 1, 1974 and who requested a subscription cancellation in writing within three business days from sale thereof but which cancellation notice was not honored by respondents with no obligation on the part of any person so notified to return any magazine, book or other publication received pursuant to said subscription order.

3. Proper notification by subscribers to respondents for refunds as called for in Paragraphs 1 and 2 above shall consist of a written statement by a subscriber stating (1) that he or she has fully or partially paid respondents or respondents' representatives for magazines, books or other publications; and (2) the date or dates of payment; and (3)(i) that he or she has not received the magazines, books or other publications as ordered at the address given by said subscriber or, (ii) that he or she has received magazines, books or other publications which were not ordered or, (iii) that he or she had exercised a three-business day cancellation and such notification of cancellation was not honored. The effective date of the notification shall be the date of mailing or communication and not on the date of receipt. Said written notification shall be valid if it contains the foregoing information and is either sent by subscribers directly to respondents or is sent to a third party and transferred by said third party to respondents. If respondents receive any oral inquiry or notification by any subscriber concerning any request for a refund, respondents shall inform said subscriber as to their obligations under Paragraphs 1 and 2 above and the requirements of this paragraph.

4. For purposes of Paragraphs 1, 2 and 3 above, Gerald Gutknecht and corporate respondent, within six (6) months after the effective date of this order, shall be obligated to make refunds to subscribers who have requested refunds prior to the effective date of this order. Any subscriber who has given notification for refund to respondents after the effective date of this order shall be entitled to said refund within six (6) months from the date said notification is mailed or communicated and not on the date of receipt.

5. Gerald Gutknecht and corporate respondent shall refund within ten (10) days from the effective date of this order all monies to persons who have ordered magazines, books or other publications totaling \$25

or more through respondents from January 1, 1974 to the effective date of this order and who requested a subscription cancellation in writing within three (3) business days from sale thereof but which cancellation notice was not honored by respondents with no obligation on the part of any person so notified to return any magazines, books or other publications received pursuant to said subscription order.

6. Gerald Gutknecht and corporate respondent shall refund within six (6) months from the effective date of this order all monies to persons who have ordered magazines, books or other publications totaling less than \$25 through respondents from January 1, 1974 to the effective date of this order and who requested a subscription cancellation in writing within three (3) business days from sale thereof but which cancellation notice was not honored by respondents with no obligation on the part of any person so notified to return any magazines, books or other publications received pursuant to said subscription order.

7. For purposes of complying with the provisions of Paragraphs 5 and 6 above, Gerald Gutknecht and corporate respondent shall make refunds to all subscribers who have given notice of cancellation and/or requested a refund and respondents have records of said notice or request within the time period as set forth in said paragraphs. If respondents received any written or oral inquiry or notification by any subscriber that his or her three day notice of cancellation had been exercised and respondents have no record of such cancellation, respondents shall then send by first class mail to said subscriber, the written notification as set forth below within one (1) month after receipt of said inquiry or notification. Gerald Gutknecht and corporate respondent shall send the notification as set forth below and make any refunds to subscribers who inquired or notified a third party and said third party transferred said notification or inquiry to respondents.

The notification shall be as follows:

Dear Subscriber:

This will acknowledge receipt of your inquiry relating to your three-day right of rescission. In order that we may properly handle this matter, please furnish us with a written statement within thirty (30) days of receipt of this letter setting forth the following: (1) the date of your purchase, (2) the dollar amount of your purchase, (3) the date you mailed your notice of cancellation to us, (4) a statement that you mailed your cancellation to us and it was not honored by us. To substantiate any of the above, please send any *copies* of any relevant documents that you may have in your possession.

If you are entitled to a refund, your refund will be sent to you within six (6) months from the date of receipt of your reply to this letter, if the total amount of your purchase was less than \$25. If, however, we did not honor your three day notice of cancellation and your purchase was \$25 or more, then your refund will be made within ten (10) days from date of receipt of your reply to this letter. If a refund is appropriate in either of the above

situations, you will be entitled to the refund and will be under no obligation to return any magazine, book or other publication received by you pursuant to this purchase.

Yours truly,
Circulation Builders, Inc.,
d/b/a Publishers Service Company of
California

It is further ordered, That respondents shall maintain at all times in the future, for a period of not less than three (3) years, all consumer complaints, notices of cancellation, and complete business records relative to the manner and form of their continuing compliance with each of the terms and provisions of this order.

It is further ordered, 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 private party or governmental agency or body or act as a defense to actions instituted by any private party or any municipal, State or Federal regulatory agency or governmental body.

It is further ordered, That:

1. Respondents herein deliver, by registered mail, a copy of this order to each of the present and future officers, employees, crew managers, crew chiefs, sales agents, solicitors, representatives and other persons engaged in the sale of said products or services;

2. Respondents provide each person so described in Paragraph 1 above, with a form returnable to the respondents clearly stating his intention to be bound by and to conform his business practices to the requirements of this order;

3. Respondents inform each of their present and future officers, employees, crew managers, crew chiefs, sales agents, representatives and other persons engaged in the sale of respondents' products or services that the respondents shall not use any third party, or the services of any third party if such third party will not agree to so file notice with the respondents and be bound by the provisions of the order;

4. If such third party will not agree to so file notice with the respondents and be bound by provisions of the order, the respondents shall not use such third party, or the services of such third party to solicit subscriptions;

5. Respondents inform the persons described in Paragraph 1 above that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

6. Respondents institute a program of continuing surveillance

adequate to reveal whether the business operations of each said person described in Paragraph 1 above conform to the requirements of this order; and that

7. Respondents discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own the deceptive acts or practices prohibited by 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 respondents herein shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

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

It is further ordered, That 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.