IT IS FURTHER ORDERED, That respondents shall forthwith distribute a copy of this order to each officer or employee having direct responsibility for either the marketing or advertising of Morton Lite Salt.

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

IT IS FURTHER ORDERED, That each respondent shall, within sixty (60) days after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist contained herein.

IN THE MATTER OF

GUTHRIE CONSTRUCTION COMPANY, ET AL.

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

Docket C-2708. Complaint, July 21, 1975-Decision, July 21, 1975

Consent order requiring an Englewood, Colo., mortgage loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Tommie W. Wakefield.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Guthrie Construction Company, a corporation, and Malcolm E. Guthrie, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said

Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Guthrie Construction Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 7265 E. Maplewood Pl., Englewood, Colo.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of housing to the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid and in connection with credit sales, have caused, and are causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondents, in certain of the abovementioned advertisements, have stated and are stating the amount of the downpayment (in dollars or as a percentage of the sale price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, all the following terms:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondents, in certain other of these advertisements, have stated and are stating the rate of interest as a simple annual rate in

conjunction with the "annual percentage rate," but have printed and are printing the simple annual rate more conspicuously than the "annual percentage rate" in violation of Section 226.10(d)(1)(i) of Regulation Z.

PAR. 7. 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 Kansas City 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 Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

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

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

1. Respondent Guthrie Construction Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 7265 E. Maplewood Place, City of Englewood, State of Colorado.

Respondent Malcolm E. Guthrie is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said

corporation, and his principal office and place of business is located at the above-stated address.

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

ORDER

IT IS ORDERED, That respondents Guthrie Construction Company, a corporation, its successors and assigns, its officers, and Malcolm E. Guthrie, individually and as an officer of said corporation, and respondents' agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, promote or assist, directly or indirectly, any arrangement or extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement the simple annual rate of interest in conjunction with the "annual percentage rate" unless the "annual percentage rate" is printed as conspicuously as the simple annual rate as required by Section 226.10(d)(1)(i) of Regulation Z.

3. Failing, in any advertisement, to make all disclosures as required by Section 226.10 in the manner prescribed by Sections 226.6, 226.8 and 226.10 of Regulation Z.

IT IS FURTHER ORDERED, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of

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

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

IT IS FURTHER ORDERED, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

HALLCRAFT HOMES, INC., ET AL.

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

Docket C-2709. Complaint, July 21, 1975-Decision, July 21, 1975

Consent order requiring a Phoenix, Ariz., and a Denver, Colo., mortgage loan company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Tommie W. Wakefield.*

For the respondents: *Charles R. Berry, Snell & Wilmer,* Phoenix, Ariz.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hallcraft Homes, Inc., a corporation, and Hallcraft Homes of Denver,

Inc., a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hallcraft Homes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 4747 N. 22nd, Phoenix, Ariz.

Respondent Hallcraft Homes, Inc., dominates, controls and furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of its wholly-owned subsidiary corporation, Hallcraft Homes of Denver, Inc., including the acts and practices hereinafter set forth.

Respondent Hallcraft Homes of Denver, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 4155 E. Jewell Ave., Suite 206, Denver, Colo.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of housing to the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid and in connection with credit sales, have caused, and are causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondents, in certain of the above-mentioned advertisements, have stated and are stating that no downpayment is required without also stating, as required by Section 226.10(d)(2) of Regulation Z, all the following terms:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondents, in certain of these advertisements, have stated, and are stating, the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and have not expressed said rate as an "annual percentage rate," using the term "annual percentage rate," as "annual percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 7. Respondents, in certain other of these advertisements, have stated and are stating the rate of interest as a simple annual rate in conjunction with the "annual percentage rate," but have printed and are printing the simple annual rate more conspicuously than the "annual percentage rate" in violation of Section 226.10(d)(1)(i) of Regulation Z.

PAR. 8. 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 Kansas City 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 Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hallcraft Homes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 4747 N. 22nd, Phoenix, Ariz.

Respondent Hallcraft Homes, Inc., dominates, controls and furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of its wholly-owned subsidiary corporation, Hallcraft Homes of Denver, Inc., including the acts and practices hereinafter set forth.

Respondent Hallcraft Homes of Denver, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 4155 E. Jewell Ave., Suite 206, Denver, Colo.

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 Hallcraft Homes, Inc., a corporation, and Hallcraft Homes of Denver, Inc., a corporation, their successors and assigns, their officers, and respondents' agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, promote or assist, directly or indirectly, any arrangement or extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 and as required by Section 226.10(d)(1) of Regulation Z.

3. Stating in any advertisement the simple annual rate of interest in conjunction with the "annual percentage rate" unless the "annual percentage rate" is printed as conspicuously as the simple annual rate as required by Section 226.10(d)(1)(i) of Regulation Z.

4. Failing, in any advertisement, to make all disclosures as required by Section 226.10 in the manner prescribed by Sections 226.6, 226.8 and 226.10 of Regulation Z.

IT IS FURTHER ORDERED, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any 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 corporations which may affect compliance obligations arising out of the order.

IT IS FURTHER ORDERED, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

IT IS FURTHER ORDERED, That the 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

ZODIAC CONSTRUCTION, LTD., ET AL.

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

Docket C-2710. Complaint, July 21, 1975–Decision, July 21, 1975

Consent order requiring an Aurora, Colo., mortgage loan company, among other things to cease violating the Truth in Lending Act by failing to disclose to

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consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Tommie W. Wakefield.*

For the respondents: *Jesse N. Lipschuetz, Hobbs and Waldbaum,* Denver, Colo.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Zodiac Construction, Ltd., a corporation, and Sol Dichter, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent Zodiac Construction, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 456 S. Ironton #404, Aurora, Colo.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of housing to the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid and in connection with credit sales, have caused, and are causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z,

which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondents, in certain of the abovementioned advertisements, have stated and are stating the amount of the downpayment (in dollars or as a percentage of the sale price) and the period of repayment without also stating, as required by Section 226.10(d)(2) of Regulation Z, all the following terms:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondents, in certain of these advertisements, have stated, and are stating, the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and have not expressed said rate as an "annual percentage rate," using the term "annual percentage rate," as "annual percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 7. 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 Kansas City 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 Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

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

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

1. Respondent Zodiac Construction, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 456 S. Ironton #404, City of Aurora, State of Colorado.

Respondent Sol Dichter is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

ORDER

IT IS ORDERED, That respondents Zodiac Construction, Ltd., a corporation, its successors and assigns, its officers, and Sol Dichter, individually and as an officer of said corporation, and respondents' agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, promote or assist, directly or indirectly, any arrangement or extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 and as required by Section 226.10(d)(1) of Regulation Z.

3. Failing, in any advertisement, to make all disclosures as required by Section 226.10 in the manner prescribed by Sections 226.6, 226.8 and 226.10 of Regulation Z.

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

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

IT IS FURTHER ORDERED, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

KENNECOTT COPPER CORPORATION

Docket 8765. Order, July 22, 1975

Denial of respondent's petition to reopen proceeding to consider the question of relief.

Appearances

For the Commission: *Fiodie P. Favarella* and *Joseph Eckhaus.*

For the respondents: *John L. Warden, Sullivan & Cromwell,* New York City. *John Bodner, Francis O'Brien, Howrey, Simon, Baker & Murchison,* Wash., D.C.

ORDER DENYING PETITION TO REOPEN PROCEEDINGS

On July 7, 1975, Kennecott Copper Corporation filed a "Petition to Reopen the Proceeding" pursuant to Section 3.72 of the Commission's Rules of Practice. The Bureau of Competition filed an "Answer in Opposition" on July 14, 1975. The arguments raised in both Petition and Answer are essentially the same as those presented before the Commission one year ago when it denied a similar petition by respondent to reopen. The Commission has again considered the arguments of petitioner and does not believe that adequate grounds have been shown to warrant reopening to consider the question of relief. The order in this matter was intended to separate Peabody from Kennecott in a way that would leave Peabody as a viable, vigorous competitor in the mining and sale of coal, as it was before its acquisition. We fully expect that Kennecott will come forth with a firm proposal as of October 1 to achieve this result, either via sale or spinoff. Accordingly,

IT IS ORDERED, That the "Petition to Reopen the Proceeding" be, and it hereby is, denied.

Commissioners Thompson and Nye dissenting.

DISSENTING STATEMENT

JULY 23, 1975

BY THOMPSON, *Commissioner.*

Respondent Kennecott has petitioned the Commission to reopen this matter for the purpose of receiving evidence on the question of whether, in view of certain alleged changes in the industry and in the economy at large since our divestiture order was entered and affirmed by the courts, reconsideration of that order might now be in the public interest. I believe this petition raises a number of serious issues that ought to be examined thoroughly by this Commission and thus would have granted it to the extent of ordering an administrative hearing on the relief question before one of our administrative law judges on an expedited basis, subject, however, to an agreement by respondent that no appeal would be taken from the decision rendered by the Commission on the basis of that supplementary record.

SEPARATE STATEMENT

SEPTEMBER 4, 1975

BY ENGMAN, *Chairman.*

In ruling on a similar petition to reopen filed by Kennecott approximately one year ago, I stated:

> Although the Commission has decided to deny the petition to reopen the Commission's order of divestiture in this matter, this action does not deny recognition of the importance of the ultimate question that will eventually confront the Commission - whether divestiture under a plan to be submitted by respondent will accomplish not only separation of Kennecott's ownership and control over Peabody, but also continuation of Peabody "as a going concern and effective competitor in the mining, production and sale of coal" as provided in the Commission's order. This question - which in my view is the crucial question underlying the issues that have been argued to us on this petition - cannot be determined now but must await completion of steps by Kennecott to develop an appropriate divestiture plan for submission to the Commission.

Nothing in the present petition causes me to believe that the situation is any different today than it was a year ago.

DISSENTING STATEMENT

SEPTEMBER 4, 1975

BY NYE, *Commissioner.*

I continue to believe these proceedings should be reopened for the purpose of assessing the changes in the structure of the coal industry which have occurred since the Commission filed its original order in this case over four years ago.

During just the last year, every government and private study of the national energy problem has concluded that the energy needs of the country can be met only by a massive increase in coal production.[1] The Federal Energy Administration has begun to order public utilities to convert their generating plants from oil and natural gas to coal.[2] More large oil companies and public utilities have entered the coal industry. The most recent production statistics indicate that 20 percent of the total industry production of coal was produced by firms which were either not involved in coal production, or only negligibly so, when the Commission entered its original order.

It thus appears indisputable that, since the Commission last examined the facts, the need for coal has increased dramatically, concentration in the coal industry has declined markedly, major companies have aggressively acquired and begun to exploit coal

[1] *E.g.*, National Plan for Energy Research, Development and Demonstration, Prepared by the Energy Research and Development Administration, at the direction of Congress, released by the President on June 30, 1975.

[2] *Wall Street Journal*, July 2, 1975, page 3, column 2.

reserves, and the feared entrenchment of Peabody's dominance of the coal industry through Kennecott's ownership has not materialized.

There is no suggestion that any customer, competitor, or potential purchaser of Peabody will be prejudiced if the Commission undertakes the requested reexamination. Therefore, I find no substantial public interest to weigh against the benefit to be derived from examining the evidence concerning current developments in the coal industry. I would grant the petition to reopen.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Order, July 25, 1975

Denial of application of respondent General Mills, Inc., for stay of commencement of complaint counsel's deposition program pending appeal.

Appearances

For the Commission: *Anthony L. Joseph.*

For the respondents: *Bierbower & Rockefeller, Howrey, Simon, Baker & Murchison* and *Clifford, Warnke, Glass, McIlwain & Finney,* Wash., D.C. *Sullivan & Cromwell* and *Cravath, Swaine & Moore,* New York City. *Chadwell, Kayser, Ruggles, McGee & Hastings* and *Barnett P. Ruthenberg,* Chicago, Ill. *C. L. Whitehill, J. J. Jenko, R. R. Heer, J. F. Finn* and *Robert J. Fulgency,* Minneapolis, Minn. *Peter J. Deluca* and *Bruce L. Bozeman,* White Plains, N.Y.

ORDER DENYING APPLICATION OF RESPONDENT GENERAL MILLS, INC., FOR STAY OF COMMENCEMENT OF COMPLAINT COUNSEL'S DEPOSITION PROGRAM PENDING APPEAL

This matter is before us on the application of respondent General Mills, Inc., for a stay of the commencement of complaint counsel's deposition program pending appeal.

The administrative law judge, by order dated July 15, 1975, denied respondents' joint motion to nullify the law judge's order of June 19, 1975, granting complaint counsel's application for the taking of depositions. On July 18, 1975, respondents filed a joint request under Section 3.23(b) of the Commission's Rules of Practice, 16 C.F.R. §3.23(b), and on the same day, the law judge denied the application of respondent General Mills for a stay of the taking of depositions pending appeal.

The administrative law judge's order denying respondents' motion to

nullify his previous order granting complaint counsel's application for the taking of depositions will be subject to interlocutory review by the Commission only if the order is certified by the judge and the Commission, in its discretion, permits the appeal. Rules of Practice Section 3.23(b), 16 C.F.R. Section 3.23(b), *Missouri Portland Cement Co.*, 80 F.T.C. 1035 (1972).

Even if the order was subject to interlocutory review under Section 3.23(b), it would be reversible only if there was a clear abuse of discretion, *e.g.*, *Kellogg Co.*, Docket No. 8883, Order of May 29, 1974 Denying Applications for Review at 3, and respondent General Mills has failed to make the necessary showing.[1]

It is ordered, That the aforesaid application for a stay is denied.

IN THE MATTER OF

MARALCO ENTERPRISES, INC., ET AL.

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

Docket C-2711. Complaint, July 25, 1975–Decision, July 25, 1975

Consent order requiring four New York City corporations operating a computer programming school, among other things to cease misrepresenting the demand for its graduates, job opportunities, earnings, and using testimonials and endorsements unfairly; and violating the Truth in Lending Act in connection with the sale of its courses.

Appearances

For the Commission: *Alice Petizon* and *Matthew Gromet.*

For the respondents: *Robert L. Katzman, Blank & Katzman*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Maralco Enterprises, Inc., a corporation, New York School of Computer

[1] It is, therefore, unnecessary to decide whether the Commission has inherent power to review an interlocutory order of an administrative law judge upon the kind of showing of irreparable harm and clear abuse of discretion that might warrant the granting of extraordinary relief by a court of appeals from an interlocutory order entered by a district court.

Technology, Inc., a corporation, Education Beneficial, Inc., a corporation, Tuition Payments, Inc., a corporation, and Hyman Marcus, Bartholomew Colangeli, and Fred Rosenberg, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Maralco Enterprises, Inc., New York School of Computer Technology, Inc., Education Beneficial, Inc., and Tuition Payments, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 200 W. 51st St., New York, N.Y.

Respondents Hyman Marcus, Bartholomew Colangeli, and Fred Rosenberg, are individuals and officers of the corporate respondents. They formulate, direct and control the policies, acts and practices of the corporations, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of courses of instruction in computer programming to the public.

COUNT I

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

PAR. 3. In the course and conduct of their business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents engage in the advertising of said courses of instruction in newspapers of interstate circulation, and the sale of said courses to consumers located in various States of the United States. In the further course and conduct of their business, respondents also cause pamphlets, brochures, checks and other documents and communications pertaining to said courses to be transmitted by the United States mails and other means in commerce. Respondents maintain, and at all times mentioned herein, have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents have made statements, both specific and

implied, in advertising and promotional material, with respect to the ability, aptitude and training required to become a computer programmer or systems analyst, employment opportunities for graduates of the school, the nature and reliability of the trial period, pay levels for graduates of the school, and the method of instruction at the school. The following are typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof:

(a) This is the profession of the future, offering the highest opportunities and salaries.

(b) A vital need exists for competent men and women to fill the personnel shortage created by the expanded use of computer equipment.

(c) In Government and Industry trained programmers are in demand.

(d) Individual instruction tailored to your ability.

(e) Among the computers that you will study are included: IBM 1401 - IBM 1440 - IBM 360 - COBOL - BAL - RPG - Honeywell 200 NCR 315 - RCA Spectra 70 - UNIVAC 418.

(f) Become a Computer Programmer and Systems Analyst.

(g) The NYSOCT course is one of the fastest ways to success.

(h) Trained personnel are in demand.

(i) In order to find out for yourself if you are qualified and suited for this field, we offer you a Free Trial Period of one full week* * *you will see for yourself whether you like this work and whether you have the ability to do programming.

(k) College degree not required.

In the course and conduct of their aforesaid business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents have made statements, both specific and implied, directly to said prospective students in the oral sales presentations made by their sales persons and other representatives. The following are typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof:

(a) Respondents' graduates readily find employment as computer programmers.

(b) Graduates of respondents' school who do not have a college degree can readily find employment as computer programmers.

(c) A substantial number or percentage of the recent graduates of respondents' courses of instruction earn a salary in excess of $150 per week.

(d) In respondents' courses of instruction, students will be taught a significant number of occupationally useful programming languages.

PAR. 5. By and through the use of the aforementioned statements and representations, and others of similar import and meaning but not expressly set out herein, respondents represented, directly or by implication, that:

1. The courses of instruction offered by respondents qualify graduates for employment in the field of data processing as computer programmers and systems analysts.

2. Requirements such as a college education are not necessary for

the placement of graduates of said courses in any position in the field of electronic data processing for which said students were trained.

3. There is a reasonable basis from which to conclude that there is now or will be a significant or substantial need or demand for trained people in the field of computer programming which said training is designed to meet.

4. Graduates of said courses of instruction are virtually assured of placement in positions for which they have been trained.

5. A substantial number or percentage of the recent graduates of said courses of instruction earn a salary in excess of $150 per week.

6. In said courses of instruction, students will be taught a significant number of occupationally useful programming languages.

7. In their said courses of instruction, respondents provide individual instruction adapted to the needs and ability of each student.

8. The one week free trial period offered by respondents is for the purpose of allowing the prospective student to determine his qualifications and suitability for the field of computer programming.

PAR. 6. In truth and in fact:

1. Said courses of instruction do not qualify students for employment in the field of data processing as computer programmers or systems analysts.

2. In a substantial number of instances a college degree is required to secure a position, for which training was offered, in the field of electronic data processing.

3. Respondents had no reasonable basis from which to conclude that there is now or will be an urgent need or demand for trained people in the field of computer programming which respondents' training is designed to meet. The only reasonable basis for such claims would be competent and reliable statistical evidence obtained prior to the making of such statements.

4. Respondents had no reasonable basis from which to conclude that graduates of their courses of instruction are virtually assured of placement in positions for which they have been trained.

5. Respondents had no reasonable basis from which to conclude that a substantial number or percentage of the recent graduates of said courses of instruction earn a salary in excess of $150 per week.

6. Respondents do not teach a significant number of occupationally useful programming languages. In fact, a substantial amount of said courses consist of instruction in obsolete programming languages of no occupational usefulness to graduates.

7. Respondents do not provide individual instruction adapted to the needs of each student.

8. The one week free trial period offered by respondents is not for

the purpose of allowing the prospective student to determine his qualifications and suitability for the field of computer programming, but instead serves as an extension of the sales presentation given by respondents. During this trial period respondents' instructors attempt to persuade prospective students to enroll by repeating to said prospective students representations similar to those set forth in Paragraphs Four and Five above.

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

PAR. 7. In the further course and conduct of their business, and for the purpose of inducing prospective students to enroll in their said courses of instruction, respondents have posted in their place of business photographs of graduates of their school who have succeeded in securing employment as computer programmers, along with their names, addresses, places of employment and starting salaries. Such photographs and accompanying information have been shown to prospective students during the course of the initial sales presentation.

Said photographs and accompanying information have also been included in direct mail flyers sent by respondents to prospective students. On these flyers is the following statement: "The pictures in this brochure are of recent graduates of our school.* * *"

PAR. 8. By and through the use of the aforesaid photographs and accompanying information, and oral statements made directly to prospective students, respondents have represented that they have had significant success within the recent past in placing their graduates in positions as programmers, and at salaries in the range indicated in said photographs.

PAR. 9. In truth and in fact:

Respondents have, in the recent past, been unable to place a significant number of their students in positions as programmers. A significant number of the photographs used in the aforesaid advertising material are of persons who graduated from said courses of instruction in 1966, 1967 and 1968.

Therefore, the statements and representations as set forth in Paragraphs Seven and Eight hereof were, and are, false, misleading, deceptive and unfair.

PAR. 10. In the course and conduct of their aforesaid business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents have represented directly to said prospective students in the oral sales presentations made by their sales persons and other representatives, that said courses of instruction will serve as the equivalent of practical programming experience, and that,

therefore, graduates of said courses can represent to prospective employers that they are qualified and experienced programmers, thus allowing them to begin work with the status of experienced programmers and not as programmer trainees, or permitting them to obtain jobs which require programming experience.

PAR. 11. In truth and in fact:

Said courses of instruction do not serve as the equivalent of practical programming experience, and graduates of said courses cannot expect to begin work with the status of experienced programmers.

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

PAR. 12. In the further course and conduct of their business, respondents have attempted to place and have placed graduates of said courses in positions as computer programmers by suggesting to these graduates that they present resumes containing false information concerning job experience to prospective employers. Respondents have provided graduates with such resumes and have aided in their preparation. Respondents advise their graduates to include in the aforesaid resumes that they have, in the past, worked as computer programmers for substantial periods of time for fictitious companies. Respondents suggest further that a telephone number be given for the firm listed, that number being the telephone number of respondents' place of business. In the event that a prospective employer attempts to verify the aforesaid information, graduates are informed that such verification will be provided by respondents. In truth and in fact, much of the information suggested by respondents is false.

The acts and practices as set forth in Paragraph Twelve hereof were, and are, false, misleading, deceptive and unfair.

PAR. 13. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators, computer programmers or computer technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered, that were able to obtain employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduates received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus,

respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 14. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses covering the same or similar subjects.

PAR. 15. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce a substantial number thereof to purchase respondents' courses by reason of said erroneous and mistaken belief.

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

COUNT II

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

PAR. 17. In the ordinary course of their business as aforesaid, respondents regularly extend consumer credit and arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are defined in Section 226.2(f)(k) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 18. 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 Section 226.2(n) of Regulation Z, respondents have caused and are causing their customers to enter into contracts, termed by them as "enrollment agreements," for the sale of respondents' services. On these contracts, respondents specify a particular amount as the cost of their service, which they term "tuition." The full

amount of this tuition is, however, charged only to those who elect to pay on an installment basis. Students who pay the entire amount on or before a specified date are given a discount from the tuition which in most cases equals 10 percent.

On these contracts, respondents provide certain consumer credit cost disclosures. Respondents do not provide any other consumer credit information.

PAR. 19. By and through the use of these contracts, and in connection with their credit sales, respondents:

1. Offer a reduction from the cash price to those who elect to meet their obligation on or before a specified date, and fail to disclose, as required by Section 226.8(o)(i) of Regulation Z:

a. The rate of discount and the date by which or period within which the discount may be taken;

b. The amount of the discount, designated as a "finance charge," using that term;

c. The "annual percentage rate," using that term.

2. Fail to accurately disclose the "cash price," using that term, as required by Section 226.8(c)(i), computed in accordance with Section 226.8(o)(7) of Regulation Z.

3. Fail to use the term "cash downpayment" to describe the amount of the downpayment in money, as required by Section 226.8(c)(2) of Regulation Z.

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

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

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

7. Fail to use the term "deferred payment price" to describe the sum of the cash price and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 20. In the ordinary course of their business as aforesaid, respondents have caused to be published advertisements of their courses of instruction, as "advertisement" is defined in Regulation Z. These advertisements aid, promote or assist, directly or indirectly, extensions of consumer credit in connection with the sale of these courses. By and through the use of the advertisements, respondents state the period of payment which can be arranged in connection with a consumer credit transaction, without also stating all of the following

items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

1. The cash price;

2. The amount of the downpayment required or that no downpayment is required as applicable;

3. The number, amount and due dates or period of payments scheduled to repay the indebtedness if credit is extended;

4. The amount of the finance charge expressed as an annual percentage rate;

5. The deferred payment price.

PAR. 21. 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(c) thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Maralco Enterprises, Inc., New York School of Computer Technology, Inc., Education Beneficial, Inc., and Tuition Payments, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their

principal office and place of business located at 200 W. 51st St., New York, N.Y.

Respondents Hyman Marcus, Bartholomew Colangeli and Fred Rosenberg are officers of the corporate respondents. They formulate, direct and control the policies, acts and practices of the corporations, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

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

ORDER

I

It is ordered, That respondents Maralco Enterprises, Inc., New York School of Computer Technology, Inc., Education Beneficial, Inc., and Tuition Payments, Inc., corporations, their successors and assigns, and their officers, and Hyman Marcus, Bartholomew Colangeli, and Fred Rosenberg, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or under any other name, in connection with the advertising, offering for sale, or sale of courses of instruction in electronic data processing, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to send by certified mail, return receipt requested, to each person that shall contract with respondents for the sale of any course of instruction, a notice which shall disclose the following information and none other:

(a) The title "IMPORTANT INFORMATION" printed in bold face type across the top of the form.

(b) Paragraphs containing the information set forth below, which shall be compiled and updated at least once every month. Such information shall be computed separately for each course of instruction offered by respondents at each school, location or facility.

(1) A paragraph as follows: "The information below relates to the (name of vocational school). The placement rate is the percentage of graduating students who obtained employment within three months of their graduation, in positions for which they were trained by this school."

(2) The "Placement Rate," using this term, to be determined as follows:

A. Respondents shall ascertain whether each graduate has obtained

employment within three months of graduation in a position for which respondents' course has prepared him. If such employment has been obtained, respondents shall further ascertain the name of the employer, the position and the starting salary obtained by the graduate.

B. The placement rate shall be the percentage of students who have graduated within the base period (as defined in Paragraph 1(b)(2)(C) who have obtained employment as determined in 1(b)(2)A. The placement rate need not include those students exempted pursuant to subparagraph 1(b)(2)D.

C. The base period shall be the one-year period ending four months prior to the date on which the information required under 1(b) is compiled or updated.

D. At the time each student signs his enrollment contract, respondents shall have him complete the form set forth in Appendix A of this order. Students who indicate their intention not to seek employment in the computer field (by checking box number 3 on such form) need not be included in the computation of the school's placement rate.

(3) The "Salary Range" and the "Average Salary (Median)," using these terms, of the graduates who have obtained employment as determined pursuant to 1(b)(2)A.

(4) The dropout rate, using the term "Students Not Completing Course," which shall be the percentage of students who were scheduled to graduate from respondents' course during the base period who have discontinued or interrupted their studies without completing such course. *Provided, however,* The dropout rate need not include:

A. Any student who indicates in writing his desire to interrupt his course of study, provided such interruption not exceed six months; or

B. Any student whose enrollment contract, and all obligations thereunder, are expressly conditioned upon the receipt by the student of an educational loan guaranteed by a federal or state agency, if the student's application for such a loan is in fact rejected; or

C. Any student who cancels his enrollment contract pursuant to his right of cancellation set forth in Paragraph 8 of this order.

(5) A sentence which sets forth the time period upon which the data in subparagraphs (1)-(4) above are based.

Provided, however, subparagraph (b) shall be inapplicable, and no disclosures shall be made thereunder, in the case of any newly established school or course, as described in subparagraph (c), until such time as the new school or course has been in operation for 16 months.

(c) In the case of any newly established school that respondents may establish in any metropolitan area or county, whichever is larger, where

they did not previously operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for 16 months, the following paragraph:

This school (course) has not been in operation long enough to indicate, what, if any, actual employment or salary may result upon graduation from this school (course).

(d) A paragraph which states that a list is available for inspection during respondents' business hours which contains the names of employers who have hired graduates of respondents' courses. Such list shall contain the names of those firms who employed students graduating in the most recent base period as ascertained by respondent in 1(b)(2)A.

(e) An explanation of the cancellation procedure provided in this order, namely that any contract or other agreement may be cancelled for any reason within three business days after receipt by the customer of this notice, or any other cancellation procedure provided by applicable state or local laws more favorable to the customer. Respondents shall include with the notice a detachable form or post card, or other separate form as may be applicable under State or local law, which the person may use as a notice of cancellation, and which indicates the proper address for accomplishing any such cancellation.

The notice required under this paragraph shall be sent by respondents no sooner than the day after the person shall have contracted for the sale of any course of instruction. No other information or materials shall be sent with this notice except for the form or post card provided to the consumer which can be used by him as a means of cancellation. During the period provided in paragraph (e), respondents shall not initiate contact with such persons other than required by this paragraph. This shall not prohibit respondents from conducting classes for those students who have begun their classes prior to signing a contract, *Provided*, That such classes are solely instructional in nature.

2. Making any representations, orally or in writing, directly or by implication, concerning any of the following:

(a) The demand for persons completing any of the courses offered by respondents in the area of electronic data processing, or any other course in any field;

(b) The opportunities or prospects for employment, or the opportunities of any type or number, available to persons completing any of respondents' courses;

(c) The likelihood of placement in positions for which respondents' graduates have been trained; or

(d) The salaries that might be earned by graduates or potential graduates of respondents' courses; or the salaries of such graduates or potential graduates as compared to their previous or present salaries;

or the salaries of such graduates or potential graduates as compared to the salaries of any other persons or groups of persons.

Provided, however, That respondents may disclose in advertising, promotional materials or in any other manner the information otherwise disclosable pursuant to subparagraphs 1(b), 1(c) and 1(d) of this order. Such information shall be disclosed in the form and manner set forth in subparagraphs 1(b), 1(c), and 1(d), except that for the purposes of this provision, the information need only be updated once every six (6) months. If any such information is disclosed, all the information shall be disclosed.

3. Representing, by the use of photographs, testimonials or otherwise, the positions or salaries obtained by graduates of respondents' courses, or the employers who have hired such graduates. However, respondents may make such representations, Provided, That:

(a) In immediate conjunction therewith, respondents disclose the information required to be disclosed under subparagraphs 1(a), 1(b), 1(c) and 1(d) of this order. Such information shall be disclosed in the form and manner set forth in subparagraphs 1(a), 1(b), 1(c) and 1(d) except that for the purposes of this provision, the information shall be updated at least once every six (6) months. Such disclosures shall be made clearly, conspicuously and with the prominence afforded to the salary, job, and other employment representations.

(b) Any such representations are based on the experiences of persons who graduated from respondents' courses during the base period used to compute the information to be disclosed pursuant to Paragraph 3(a).

(c) The arithmetic average of the salaries disclosed is no greater than the median salary disclosed pursuant to Paragraph 3(a).

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

(a) College education, training beyond a high school diploma or job experience is not necessary or advantageous for the placement of persons in the field of electronic data processing, or otherwise representing that persons with a high school education or its equivalent will achieve employment in the electronic data processing field, unless in every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or job experience is highly advantageous for placement; or misrepresenting in any manner the qualifications necessary to achieve employment in any field.

(b) Any number of occupationally useful programming languages are taught in respondents' courses of instruction in excess of those actually provided; or representing in any manner the materials available to enrollees in said courses unless true; or representing that types or brands of computers are used, unless true and the designation of the computer is disclosed.

(c) Individual instruction adapted to the needs of each student is provided in respondents' courses of instruction; or misrepresenting in any manner the quality or type of instructional method used in said courses. *Provided, however,* Respondents may represent that a student can proceed at his or her own rate through the respondents' course material, if such is the fact.

5. Representing, orally or in writing, directly or by implication, that any courses of instruction are the equivalent of practical experience in the field of computer programming, or that the graduates of any such courses can represent themselves to prospective employers as experienced programmers.

6. Providing students of respondents' courses of instruction with resumes containing untrue information, suggesting to students that such resumes be prepared, or aiding in any way in the preparation of such resumes, or in any way verifing or attesting to false information included in resumes by graduates of respondents' courses of instruction.

7. Misrepresenting directly or by implication the significance or importance of any courses of instruction in qualifying any persons for employment in a particular field of endeavor, or misrepresenting in any manner the positions which graduates have obtained.

8. Contracting for any sale of any course of instruction in the form of a sales contract or other agreement which shall become binding prior to midnight of the third business day after the receipt by the customer of the form of notice provided for in Paragraph 1 above. Upon cancellation of any said sales contract or other agreement, as provided in Paragraph 1(e) above, respondents are obligated to refund within three business days to any person exercising the cancellation right all monies paid or remitted up until the notice of cancellation.

9. Making any representations of any kind whatsoever in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field of commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

II

It is further ordered, That respondents Maralco Enterprises, Inc., New York School of Computer Technology, Inc., Education Beneficial, Inc., and Tuition Payments, Inc., corporations, their successors and assigns, and their officers, and Hyman Marcus, Bartholomew Colangeli and Fred Rosenberg, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or

through any corporate or other device, in connection with any extension of consumer credit or in connection with 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) and the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing, when offering a reduction from the cash price to those who elect to meet their obligation on or before a specified date, to disclose, as required by Section 226.8(o)(1) of Regulation Z:

(a) The rate of discount, and date by which or period within which the discount may be taken;

(b) The amount of the discount, designated as a "finance charge," using that term; and

(c) The "annual percentage rate," using that term.

2. Failing to accurately disclose the "cash price," using that term, as required by Section 226.8 (c)(1), computed in accordance with Section 226.8(o)(7) of Regulation Z.

3. Failing to disclose the downpayment in money, and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

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

5. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

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

7. Failing to disclose the sum of the cash price and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

8. Stating the period of payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(a) The cash price;

(b) The amount of the downpayment required or that no downpayment is required, as applicable;

(c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if credit is extended;

(d) The amount of the finance charge expressed as an annual percentage rate; and

(e) The deferred payment price.

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

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

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

It is further ordered, That respondents maintain adequate records, to be furnished upon request of the staff of the Federal Trade Commission, which evidence compliance with the provisions of this order, including, but not limited to, the names, addresses and scores of all persons who take an aptitude test of any kind, copies of all contracts entered into between respondents and customers, copies of all correspondence between respondents and their customers, records showing the name and address of each student, the dates of his attendance, the date of his graduation or other termination of his studies, the names and addresses of any employers he was referred to, and his position and starting salary.

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 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
IMPORTANT NOTICE

The (name of school), in accordance with an agreement with the Federal Trade Commission, must determine the job placement rate of its graduates. To make this determination, it is necessary to know the intention of each student with regard to his or her desire to obtain employment in the computer field.

In order to assist the school in computing the placement rate of its graduates, *please read and complete this form carefully.*

Name: _____
Last First Middle

Address: _____
Number and Street City State Zip

Please *check one* of the following boxes:

☐ 1. I am not presently working, and I am taking this course to help me get a job in the computer field.

☐ 2. Although I am presently employed, I am taking this course to help me get a job in the computer field or to help me get a promotion in the computer field.

☐ 3. I do not plan to look for a job in the computer field after I graduate.

If you checked box number 3, please indicate why you do not plan to look for a job in the computer field. Please *circle* the appropriate letter: (Do not fill out this part if you checked 1 or 2 above.)

A. I am presently employed and I am taking this course to help me better understand my current job and better perform my duties.

B. I am taking this course solely because I am interested in computers, but I do not wish to look for a job in the computer field.

C. Other (please specify) _____

_____

_____ _____
Date Signature

IN THE MATTER OF

ASSOCIATED DRY GOODS CORPORATION

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

Docket 8905. Complaint, Dec. 1, 1972-Decision, July 28, 1975.

Consent order requiring a New York City department store organization, among other things to divest itself of all stocks, assets, properties, etc., which it acquired in 1972, comprising Ayr-Way Stores, Inc.

Appearances

For the Commission: *Martin A. Rosen, Peter J. Brickfield,* and *David B. Loken.*

For the respondents: *W.S. Jackson, Milbank, Tweed, Hadley & McCloy* and *Theodore J. Carlson, Gould & Wilkie,* New York City. *Abe Krash, Arnold & Porter,* Wash., D. C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Associated Dry Goods Corporation has violated the provisions of Section 7 of the Clayton Act (15 U.S.C. § 18) through its acquisition of L.S. Ayres and Company, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. Definitions

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

(a) "Department stores," as referred to herein, includes retail establishments normally employing 25 people or more, having sales of apparel and soft goods combined amounting to 20 percent or more of total sales and engaged in selling each of the following lines of merchandise:

(i) Furniture, home furnishings, appliances, radio and TV sets;

(ii) A general line of apparel; and

(iii) Household linens and dry goods.

For establishments classified as department stores, sales of each of the lines listed above must be less than 80 percent of total sales. However, an establishment with total sales of $5 million or more is classified as a department store even if sales of one of the merchandise lines described above exceed the maximum percent of total sales,

provided that the combined sales of the other two groups is $500,000 or more.

This definition corresponds to Bureau of Census Industry Classification No. 531. Both discount department stores and conventional department stores (including, as to both categories, chain store operations) fall within such definition; the essential difference between these two types of department stores being that the discount department stores utilize mostly self service techniques and operate at a lower gross margin of profit than most conventional department stores and, as a consequence, compete primarily as to price.

(b) "GMAF stores," as used herein, refers to all retail establishments included in the following Bureau of Census Major Industry Group and Industry Classifications.

Census Number	*Descriptions*
Classification #531	Department stores
Major Industry Group #56	Other stores primarily engaged in the sale of apparel.
Classification #533	Limited price variety stores
Classification #539	General merchandise stores, dry goods stores and sewing and needlework stores.
Major Industry Group #57	Furniture, home furnishings, appliances and equipment stores.

(c) The "Louisville Standard Metropolitan Statistical Area" is comprised of Jefferson County, Kentucky and Clark and Floyd Counties, Indiana.

(d) The "Evansville Standard Metropolitan Statistical Area" is comprised of Vanderburgh and Warrick Counties, Indiana and Henderson County, Kentucky.

(e) The "Lexington Standard Metropolitan Statistical Area" is comprised of Fayette County, Kentucky.

II. Associated Dry Goods Corporation

2. Associated Dry Goods Corporation (Associated) is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 417 Fifth Ave., New York, N.Y.

3. Associated is one of the largest department store organizations in the United States, with net sales during the fiscal year ended Jan. 29, 1972, of approximately $849 million. Prior to the instant acquisition it operated 15 store divisions, each consisting of a main store and-with

one exception-one or more branch stores, located in 17 states and the District of Columbia. Altogether, the 15 divisions operated a total of 86 stores, occupying in the aggregate approximately 16,904,600 square feet of floor area. New stores and enlargements nearing completion and expected to open in 1972 will provide an additional 878,000 square feet of floor area.

4. Each of Associated's store divisions, and their constituent stores, are major retail institutions in the markets in which they are located. Nine of the 15 store divisions are the result of a series of acquisitions of major department store operations consummated since 1955, including: J.W. Robinson Co. (Southern California), Sibley, Lindsay & Curr Co. (Upstate New York), Stix, Baer & Fuller (Missouri), The Denver Dry Goods Company (Colorado), Joseph Horne Co. (Western Pennsylvania), The H.S. Pogue Company (Southwestern Ohio), Goldwaters (Phoenix, Arizona), Erie Dry Goods Company (Erie, Pennsylvania) and The Diamond (West Virginia). A major portion of Associated's business, in terms of square footage of floor area, sales volume and geographic areas of operations, is attributable to these acquisitions.

5. Associated does business in the Louisville, Lexington and Evansville Standard Metropolitan Statistical Areas (SMSA's) through its Stewart Dry Goods Company division (Stewart's). Stewart's operates two department stores, its main store, and a branch, in the Louisville SMSA, two branch department stores in the Lexington SMSA and a single branch department store in the Evansville SMSA.

6. The two Stewart's department stores in the Louisville SMSA, combined, have 715,500 square feet of floor area and had combined sales of approximately $27 million in 1971. Stewart's is the leading department store operation in the Louisville market in terms of floor area and the second ranking department store operation and GMAF store operation in terms of sales volume.

7. The Stewart's branch department store in Evansville has 134,400 square feet of floor area and had sales of approximately $4.7 million in 1971. It is the second largest individual department store in the Evansville SMSA in terms of floor area and ranks fourth among individual department stores in sales volume. Stewart's has the fifth ranking department store operation in the Evansville SMSA, in terms of sales, and is the fifth ranked GMAF store operator in that market.

8. Associated is, and has been, engaged in "commerce" within the meaning of Section 7 of the Clayton Act.

III. L.S. Ayres and Company

9. Prior to its acquisition by Associated Dry Goods Corporation on or about Apr. 20, 1972, L.S. Ayres and Company (Ayres) had been a

corporation organized and existing under the laws of the State of Indiana, with its principal office located at 1 W. Washington St., Indianapolis, Ind.

10. Ayres was the leading independent department store organization in the State of Indiana, with net sales during the fiscal year ended Jan. 29, 1972, of approximately $213 million. It operated 30 conventional and discount department stores and 12 apparel specialty shops in various metropolitan markets in the States of Indiana, Illinois, Ohio and Kentucky, and a wholesale furniture business in Indianapolis, Ind. Ayres' department stores occupied in the aggregate approximately 3,867,000 square feet of floor area. New stores and enlargements nearing completion and expected to open in 1972 will provide an additional 271,000 square feet of floor area.

11. L.S. Ayres and Company was founded in 1872 and assumed its present name in 1874. Prior to 1958, substantially all of the company's operations were conducted in its main department store in downtown Indianapolis, Ind. Since then the company has undertaken an extensive expansion program. In 1958, it opened its first conventional department store branch, and has since opened four other such branches and acquired five additional conventional department stores. In 1961, it opened its first discount department store, and has since opened 19 additional similar stores. In 1968, it opened the first of its apparel specialty shops. Eleven additional similar shops have since been established. The substantial growth of Ayres as a department store operator and GMAF store operator has been accomplished preponderantly through internal expansion.

12. Ayres was doing business in the Louisville, Lexington and Evansville SMSA's at the time the instant acquisition was consummated. Its initial entry into these markets was accomplished through the opening of two discount department stores in Evansville in the mid 1960's. Its most recent store opening in these markets was the establishment of a specialty apparel shop in Lexington in August 1971, representing its initial entry into that market.

13. In the Louisville SMSA, Ayres was operating (and Associated now operates) two conventional department stores, two discount department stores and an apparel specialty shop. Two additional discount department stores are scheduled for opening in August 1972. The conventional stores, representing Ayres' initial entry into the Louisville market, were acquired late in 1969. The apparel specialty shop was opened in 1970 and the two existing discount department stores were opened in 1971.

14. The four department stores formerly operated by Ayres in the Louisville SMSA, combined, have approximately 328,000 square feet of

floor area and had combined sales of approximately $16 million during 1971. In terms of square footage of floor area, they made Ayres the third largest department store operation in the Louisville market. Upon the opening of the two additional discount department stores, in August 1972 Ayres would have become the second largest department store operation in Louisville in terms of floor area, exceeded only by Stewart's. With regard to sales volume, Ayres was the fifth ranking department store operator and the eighth ranking GMAF store operator in the Louisville SMSA. With the opening of additional stores, and increased consumer familiarity with and acceptance of the Ayres name, Ayres' market share and market rank as a department store operator and GMAF store operator in the Louisville SMSA and market rank could have been expected to increase appreciably.

15. The two department stores in the Evansville SMSA formerly operated by Ayres (and presently operated by Associated) have 176,000 combined square feet of floor area and had combined sales of approximately $9.5 million during 1971. Ayres had the second largest department store operation in the Evansville market in terms of floor area. With regard to sales, it was the third ranking department store operator and GMAF store operator in said market.

16. Ayres was engaged in "commerce" within the meaning of Section 7 of the Clayton Act.

IV. The Acquisition

17. On or about Apr. 20, 1972, Associated acquired the assets of L.S. Ayres and Company, consisting of all of the stock of Ayres' wholly owned operating subsidiaries, in exchange for common stock of Associated having a market value on the above date of approximately $80 million. The Associated stock was then distributed to Ayres' shareholders and Ayres was dissolved as a corporate entity.

V. Nature of Trade and Commerce

A. *Generally*

18. GMAF stores comprise the leading group of retail operations in the United States, with a sales volume approaching $100 billion in 1970. GMAF store sales represent approximately 25 percent of all retail sales in the United States.

19. Department stores are the leading component within the GMAF store group, accounting for approximately 38 percent of GMAF store sales, as of 1970. Department stores are the third most important group of retail stores in the United States, exceeded in sales volume only by grocery stores and automotive dealers. Their national sales volume of

approximately $38.5 billion in 1970 represented over 10 percent of all retail sales in the country. The percentage of all retail sales accounted for by department store sales has, moreover, been rising in recent years.

20. Department stores constitute a distinct line of commerce, recognized as such by the consuming public, the trade, and agencies and organizations which gather and disseminate information on retailing as a distinct line of commerce.

21. The department store industry has been subject to a significant and continuing merger trend in recent years, and is substantially and increasingly dominated by multi-unit organizations. A number of leading multi-unit organizations are currently subject to Federal Trade Commission consent orders in connection with previous acquisitions and mergers.

B. *Louisville, Evansville and Other Markets*

22. Department store sales in the Louisville SMSA totalled approximately $270 million in 1971, and GMAF store sales totalled approximately $520 million. Associated's 1971 sales through its two Louisville department stores were approximately $27 million. Ayres' 1971 department store sales in the Louisville SMSA were approximately $16 million. In addition, Ayres' specialty apparel shop had total 1971 sales of approximately $200 thousand in said market. These sales represent the following approximate shares of 1971 sales in the respective lines of commerce in the Louisville SMSA.

	Associated	*Ayres*	*Combined*
Department stores	*10.1%*	*5.9%*	*16.0%*
GMAF stores	*5.2%*	*3.1%*	*8.3%*

Prior to the instant acquisition, Associated ranked second in sales among department stores and among GMAF stores in said market. Following the acquisition, Associated ranks first in both lines of commerce.

With regard to existing concentration, prior to the acquisition the four leading sellers in the Louisville SMSA accounted for approximately 41.3 percent of department store sales and 22.8 percent of GMAF store sales. The eight leading sellers accounted for approximately 64.3 percent of department stores sales and 38.3 percent of GMAF store sales. Following the acquisition such figures are approximately as follows:

	Top 4	*Top 8*
Department stores	*47.3%*	*68.2%*
GMAF stores	*25.9%*	*40.7%*

23. Department store sales in the Evansville SMSA totalled approximately $80 million in 1971, while GMAF store sales totalled approximately $158 million. Associated's 1971 department store sales in said market totalled approximately $4.7 million. Ayres' 1971 total department store sales in the Evansville SMSA were approximately $9.6 million. In addition, Ayres' specialty apparel shop had total 1971 sales of approximately $180 thousand in said market. These sales represent the following approximate shares of 1971 sales in the respective lines of commerce in the Evansville SMSA.

	Associated	*Ayres*	*Combined*
Department stores	*5.9%*	*12.1%*	*18.0%*
GMAF stores	*3.0%*	*6.1%*	*9.1%*

Prior to the instant acquisition, Associated ranked fifth in sales among department stores and GMAF stores in said market. Following the acquisition, Associated ranks third in both lines of commerce.

With regard to existing concentration, prior to the acquisition the four leading sellers in the Evansville SMSA accounted for approximately 71.5% of department store sales and 38.5% of GMAF store sales. The eight leading sellers accounted for approximately 47.7% of GMAF store sales. Following the acquisition such figures are approximately as follows:

	Top 4	*Top 8*
Department stores	*77.4%*	
GMAF stores	*41.4%*	*48.8%*

24. In addition to competition between Associated and Ayres in the Louisville and Evansville SMSA's, the two companies are potential significant competitors in a number of other metropolitan areas in or near the midwestern United States, including, for example, Indianapolis, Ind., Dayton, Ohio and Lexington, Ky. Initial actual competition in the Lexington SMSA commenced in 1971, with the establishment of Ayres' specialty apparel shop. Associated's Stewart's division opened an additional branch department store in Lexington in May 1972, located in the same shopping center as Ayres' recently established apparel shop.

VI. *Effects of the Acquisition*

25. The effect of the acquisition of Ayres by Associated may be substantially to lessen competition or to tend to create a monopoly in the department store industry and/or the GMAF store industry, throughout the United States or in certain sections thereof. In particular, the effects of such violation have been and may be the following, among others:

(a) Actual and potential competition between Associated and Ayres in the department store industry and/or the GMAF store industry has been eliminated, prevented or lessened in the Louisville and Evansville SMSA's.

(b) Potential competition between Associated and Ayres in the department store industry and/or the GMAF store industry has been eliminated, prevented or lessened in other metropolitan areas in or near the midwestern United States.

(c) Associated, a significant competitive factor in the department store industry and the GMAF store industry in the Louisville and Evansville SMSA's, has eliminated Ayres as another significant competitive factor in such markets.

(d) Concentration in the department store industry and the GMAF store industry will be preserved and increased in the Louisville and Evansville SMSA's, in other metropolitan areas in or near the midwestern United States and throughout the United States.

VII. *Violation Charged*

26. The effect of Associated's acquisition of Ayres may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act (15 U.S.C. §18), as more fully described in Paragraph 25, above.

DECISION AND ORDER

The Federal Trade Commission, having issued a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18; and

Upon joint application of the parties and certification of such application to the Commission by the administrative law judge, the Commission, by order dated Jan. 23, 1975, having withdrawn the matter from adjudication pursuant to Section 2.34(d) of the rules of practice; and

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

The Commission having considered the agreement and having provisionally accepted it, and the agreement containing consent order

having thereupon been placed on the public record for a period of sixty (60) days having duly considered the comment filed thereafter pursuant to Section 2.34(b) of its rules;

Now, in further conformity with the procedure prescribed in Section 3.25(d) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Associated Dry Goods Corporation is a corporation, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 417 Fifth Ave., New York, N.Y.

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

ORDER

I

Respondent shall, as soon as possible and in no event later than two years from the effective date of this order, divest all of the assets, properties, stores, good will, rights, privileges and interests of whatever nature, real, personal, tangible and intangible (subject to liabilities and to the other provisions of this order) comprising Ayr-Way Stores, Inc., a division of respondent Associated. Divestiture shall include but shall not be limited to the Ayr-Way stores and warehouse listed in the schedule attached hereto as Exhibit A and all Ayr-Way facilities opened after Dec. 1, 1974, and prior to divestiture.

Respondent may, but shall not be required to divest the names, trademarks, service names, service marks, or logos "Ayr-Way" or "Ayr-Way Stores, Inc." Nothing in this order shall be deemed to require the divestiture of respondent of the names, trademarks, service names, service marks, or logos "Associated Dry Goods Company," "Ayres," "L.S. Ayres" or "L.S. Ayres and Company, Inc.," or to require the divestiture of any other assets relating to the business of Associated Dry Goods Corporation or L.S. Ayres and Company, Inc.

Divestiture shall be in a manner which preserves the assets and business of Ayr-Way Stores, Inc. as a going concern and fully effective competitor.

In the event that respondent elects to divest itself of the assets or capital stock of Ayr-Way Stores, Inc. by a sale of such assets or capital stock other than by means of a public offering of capital stock which is registered pursuant to the Securities Act of 1933, the acquirer or acquirers shall be approved in advance by the Commission. Nothing in this order shall be deemed to preclude divestiture to a firm which is engaged in operating department stores or GMAF stores, as defined by

the Complaint, if such acquirer is otherwise acceptable to the Commission. Respondent shall not knowingly sell, divest, or otherwise transfer, directly or indirectly, any assets or stock of Ayr-Way Stores, Inc. to any person (other than an underwriter or selling dealer) who is at the time of the transfer the beneficial owner of more than two (2) percent of the outstanding stock of Associated.

If divestiture has not been effected within the two-year period provided by this order, the Commission, on request submitted at least 30 days prior to the expiration of the period shall grant respondent an opportunity to file a written submission which it will consider before issuing any further order or orders which may be deemed appropriate.

II

Associated or its subsidiaries may be obligated on the effective date of this order as lessee, guarantor or otherwise with respect to leases pertaining to Ayr-Way stores, its land or buildings, and other obligations of Ayr-Way. Associated will use its good faith efforts to obtain releases of such obligations in connection with the divestiture. In the event that Associated is unable to obtain such releases, the divestiture herein provided shall be deemed to have been accomplished notwithstanding the continuance of any such obligations on the part of Associated, *Provided*, That at the time of divestiture the acquiring entity assumes responsibility for the operation of the divested facilities; and *Provided further*, That the continuance of any such obligation on the part of Associated does not give rise to any influence or control, on the part of Associated in, over or with respect to the operations by said entity of the facilities divested.

In the event of default by the acquiring entity with respect to any such lease or other obligation upon which Associated may remain obligated, Associated shall be entitled, without being deemed to have violated any provisions of this order, to take whatever action may be necessary with respect to the defaulted facility or facilities to hold itself harmless from the consequences of any such default or defaults, including the right to repossess and to reoperate any such retail facility or facilities the lease of which is in default, *Provided*, That Associated notifies the Commission within 48 hours of taking such action, and Associated shall redivest itself of any such retail facilities so repossessed within one year from the date of repossession unless a longer period is approved by the Commission, or unless the Commission approves the continued operation by Associated of any such facility.

Associated shall not utilize the names, trademarks, service names, service marks, or logos "Ayr-Way" or "Ayr-Way Stores, Inc.," in the

course of any retail business operated by Associated for a period of at least two years from the date of the divestiture.

III

(1) Pending divestiture, respondent shall make every reasonable effort to maintain and preserve the assets and business of Ayr-Way Stores, Inc. in good operating condition with such replacements and additions and such effective overall organization as may be necessary to divest Ayr-Way Stores, Inc. as a viable competitive entity; *Provided, however*, That nothing contained herein shall be deemed to require respondent to continue to operate any store which has become so unprofitable that sound business judgment requires its closing or which is rendered inoperative as a result of force majeure or other event beyond the control of respondent.

(2) Whether the operation of a particular store has become so unprofitable during the pendency of divestiture that sound business judgment requires its closing shall be determined on the basis that such operation shall have yielded an aggregate operating loss during the last previous two calendar years, taken together. An "operating loss" occurs when the total operating revenues of a store fail to cover its total reasonable operating costs. "Operating costs" shall not include taxes on net income or any provision for the general and administrative overhead of L.S. Ayres and Company, Inc. or Associated Dry Goods Corporation. Other general and administrative expenses, provision for doubtful accounts and inventory adjustments shall be deemed to be reasonable if they do not exceed by more than one-third Associated Dry Goods' average for stores of similar size. Corrections to year-end statements and inventory shall be made in accordance with the methods and procedure used by Ayr-Way Stores, Inc. for the two years prior to the making of corrections.

(3) The judgment of respondent that a particular store should be closed prior to divestiture shall be communicated in writing to the Commission at least 30 days before the proposed closing, together with a full statement of (a) the reasons for such closing; (b) in case unprofitability is alleged, the store's sales and profitability history; (c) respondent's plans, if any, for the disposition of the store's assets, the consideration to be received therefor and the identity of proposed transferees so far as then known; and (d) such other information, including production of and/or access to original accounting records, as may be required for consideration of the proposed closing.

IV

It is further ordered, That respondent shall, within ninety (90) days from the date of service of this order, and every one hundred eighty (180) days thereafter until the divestiture required by this Order has been completed submit in writing to the Commission, a report setting forth its plans, actions and progress in complying with the divestiture required by this order and such other reports related to the divestiture as may, from time to time, be requested by the Commission.

EXHIBIT A

APPENDIX A

1. Ayr-Way East, 6800 Pendleton Pike Indianapolis, IN 46226.
2. Ayr-Way West, 2333 Lafayette Road Indianapolis, IN 46222.
3. Ayr-Way South, 3700 South East Street Indianapolis, IN 46227.
4. Ayr-Way Washington East, 8101 East Washington Street Indianapolis, IN 46219.
5. Ayr-Way Richmond, 4401 National Food East Richmond, IN 47374.
6. Ayr-Way Evansville East, 730 South Green River Road Evansville, IN 47715.
7. Ayr-Way Anderson, 5501 Seatterfield Road Anderson, IN 47401.
8. Ayr-Way Evansville North, 4000 First Avenue Evansville, IN 46268.
9. Ayr-Way Indianapolis N.W., 6901 North Michigan Road Indianapolis, IN 46268.
10. Ayr-Way Kokomo, 1037 South Reed Road Kokomo, IN 46901.
11. Ayr-Way Nora, 1300 East 86th Street Indianapolis, IN 46240.
12. Ayr-Way Bloomington, 601 College Mall Road Bloomington, IN 47401.
13. Ayr-Way Fort Wayne North, 3801 Coldwater Road Fort Wayne, IN 46805.
14. Ayr-Way Fort Wayne South, 7601 South Anthony Boulevard Fort Wayne, IN 46806.
15. Ayr-Way Washington West, 1225 S. High School Road Indianapolis, IN 46241.
16. Ayr-Way South Bend, McKinley Square, 3512 East Cedar South Bend, IN 46615.
17. Ayr-Way St. Matthews, 4714 West Port Road Louisville, KY 40207.
18. Ayr-Way Clarksville, 1500 Greentree Boulevard Clarksville, IN 47130.
19. Ayr-Way Columbus, 2985 N. National Road Columbus, IN 47201.
20. Ayr-Way Champaign, 2002 Glen Park Drive Champaign, IL 61820.
21. Ayr-Way Danville, 2917 N. Vermilion Danville, IL 61832.
22. Ayr-Way Bashford Manor, 2034 Bashford Manor Lane West Buechel, KY 40218.
23. Ayr-Way Middletown, 1701 University Boulevard Middletown, OH 45042.
24. Ayr-Way Preston Road, 7100 Preston Road Louisville, KY 40218.
25. Ayr-Way Lafayette, 3100 Sagamore Parkway, North Lafayette, IN 47904.
26. Ayr-Way Scottsdale, 1112 Scottsdale Mall Road South Bend, IN 46612.
27. Ayr-Way Downtown Louisville, 427-437 South 4th Street Louisville, KY 40202.
28. Ayr-Way Distribution Center, 8250 Zionville Road Indianapolis, IN 46268.

IN THE MATTER OF

SAXONY POOLS, INC., ET AL.

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

Docket 8962. Complaint Apr. 19, 1974-Decision, July 28, 1975*

Consent order requiring a Linden, N.J., seller and distributor of swimming pools, among other things to cease using bait and switch tactics; misrepresenting prices; misrepresenting their product as "maintenance free;" furnishing false or misleading guarantees.

Appearances

For the Commission: *John A. Crowley* and *Alan F. Rubinstein.*

For the respondents: *Edward B. Dreskin*, Newark, N.J., and *Edwin S. Rockefeller, Bierbower & Rockefeller*, Wash., D.C.

COMPLAINT*

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Saxony Pools, Inc., a corporation, and Simon Sax, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1.* Respondent Saxony Pools, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 416 E. Elizabeth Ave., Linden, N.J.

Respondent Simon Sax is the president 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 45 Hassa St., Linden, N.J.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools and other merchandise and home improvement products.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertisements designed to secure leads to potential

* Reported as amended by the administrative law judge's order of Aug. 23, 1974, to reflect that there have been changes in the name and address of the corporate respondent and in the address of the individual respondent.

purchasers of swimming pools and other merchandise and home improvement products to be placed in various newspapers and other publications. The respondents are responsible for the content of said advertisements.

PAR. 4. In the further course and conduct of their business as aforesaid, respondents sell and distribute the aforementioned swimming pools and other merchandise and home improvement products by causing said swimming pools and other merchandise and home improvement products to be shipped from the places of business of their various suppliers in the United States to purchasers at retail in States other than the States from which such shipments originate.

There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said swimming pools and other merchandise and home improvement products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers of general interstate circulation, of which the following are typical and illustrative, but not all inclusive:

Low Low Pre-Season Priced! $499 Completely Installed
Only $599 Completely Installed
Unbelievably Priced from ONLY $599 Completely Installed
NEVER NEEDS MAINTENANCE

PAR. 6. In the further course and conduct of their business as aforesaid and for the purpose of inducing the sale of their products, respondents, their representatives, agents or employees have made, and are now making oral statements and representations to the effect that respondents' products are fully guaranteed for a period of ten years and that customers will receive a lifetime filter with their pool and that one of respondents' pools has been advertised in a national magazine at a price of $5,000 and respondents' lower price for said pool is a special price and that the pools of some customers will be used as "demonstrators."

PAR. 7. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell swimming pools of the kind therein described and on the terms and conditions stated.

2. Their advertised offer of a pool for $499 is a special offer made only during the "pre-season" period.

3. Respondents' pools are maintenance free or will not require periodic inspection or servicing to remain in useable condition.

4. Some of the swimming pools sold by respondents are fully guaranteed for a period of ten years.

5. The filter provided with respondents' pools is a "Lifetime Filter" without qualification as to what period is covered by the term lifetime.

6. One of respondents' pools has been advertised in a nationally distributed magazine at a price of $5,000 and, therefore, respondents' customers are being offered a bargain or special price for said pool which would effect a savings amounting to the difference between the nationally advertised price and the price at which the pool is being sold.

7. The pools of certain of respondents' customers will be used for the purpose of demonstrating respondents' pool and as a result of such use, said customers will receive a discount from the purchase price of the pool or will receive a referral fee or monetary allowance for each pool sale resulting therefrom.

PAR. 8. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell swimming pools of the kind therein described at the prices or on the terms and conditions stated but are made for the purpose of obtaining leads to persons interested in the purchase thereof. After obtaining such leads, individual respondent Simon Sax or respondents' salesmen or representatives call upon such persons and disparage respondents' advertised swimming pools and otherwise discourage the purchase thereof and attempt to sell and frequently do sell different and more expensive swimming pools.

2. The advertised offer of a $499 pool is not a special offer made only during the "pre-season" period. Said pool is advertised regularly at the represented price and on the terms and conditions therein stated.

3. Respondents' pools are not maintenance free. In fact, they require such maintenance as is usual and customary for swimming pools.

4. Respondents' swimming pools are not warranted in every respect without limitations or conditions for a period of ten years or any other period of time. Such warranty or guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the warranty or guarantee and fails to set forth the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder.

5. The "Lifetime" filter provided with respondents' swimming pools

is not guaranteed for a period denominated as a lifetime. The filter is guaranteed by the filter manufacturer for a five year period with a pro rata share of the repair or replacement cost being borne by the purchaser after the first year.

6. Respondents have not sold their pool for $5,000, but use this price to mislead potential customers into the belief that they are receiving a special or discount price. In fact respondents do not have a regular selling price for this pool; the price for which the pool is sold is often substantially below $5,000 and varies from purchaser to purchaser depending upon the resistance of the particular customer.

7. After the installation of respondents' swimming pool is completed, the purchaser's pool will not, in a substantial number of instances, be used for demonstration or advertising purposes by respondents. As a result of allowing, or agreeing to allow their pools to be used as models, purchasers are not granted reduced prices, nor do they receive allowances, discounts, commissions or referral fees.

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

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of swimming pools and other merchandise of the same general kind and nature as sold by respondents.

PAR. 10. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices had had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements were and are true and into the purchase of substantial quantities of respondents' swimming pools and other merchandise by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondents were and are to the injury and prejudice of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; 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 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 set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Saxony Pools, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 416 E. Elizabeth Ave., Linden, N.J.

Respondent Simon Sax is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his business address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Saxony Pools, Inc., a corporation, its successors and assigns, and its officers and Simon Sax, individually and as an officer of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution or installation of swimming pools or any home improvement product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations designed to obtain leads or prospects for the sale of other merchandise.

2. Representing directly or indirectly that any products or services are offered for sale when such is not a bona fide offer to sell said products or services.

3. Disparaging any product, installation or service which is advertised or offered for sale by respondents.

4. Representing, directly or by implication, through the use of terms such as special, preseason, reduced or sale price, or words of similar import and meaning, that a swimming pool or any home improvement product has been reduced in price unless the lower price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities by respondents in the recent regular course of business or when the price for such merchandise has not been established by respondents through offering said merchandise for sale in good faith for a substantial period of time in the recent regular course of business; or misrepresenting in any manner that respondents' purchasers or prospective purchasers will be granted reduced prices or will receive discounts, referral fees or allowances of any type.

5. Representing that the swimming pools or any home improvement products sold or offered for sale by respondents are maintenance free, or employing representations of similar meaning and import.

6. Representing directly or indirectly that any of respondents' products, installations or services are warranted or guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such warranty or guarantee.

7. Representing, directly or by implication, through the use of the term "Lifetime," or through any other phrase or term, that the filter will last for the period of a lifetime or for any other period of time which is in excess of the time period covered by the filter's guarantee or warranty.

8. Representing directly or indirectly that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

9. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been

usually and customarily sold at retail in the trade area where the representation is made.

It is further ordered, That respondents shall maintain business records adequate to establish that the pricing claims and similar representations of the type referred to in Paragraph 4 of this order constitute a significant reduction from the prices at which such merchandise has been sold in substantial quantities or offered for sale in good faith by respondents for a substantial period of time in the recent regular course of their business.

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

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

It is further ordered, That respondents shall forthwith distribute a copy of this order to all operating personnel, agents or representatives concerned with the promotion, sale, distribution or installation of swimming pools or any home improvement product and secure from each such person a signed statement acknowledging receipt of said order.

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

IN THE MATTER OF

SERR OF WASHINGTON, D.C., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8991. Complaint, Aug. 28, 1974–Decision, July 28, 1975

Consent order requiring a Washington, D.C., promoter of a hair implant replacement system, among other things to cease misrepresenting the nature, appearance

and other related characteristics of its system; and failing to disclose that their system involves surgical procedures and continually requires special care. Further, respondents are required to devote 15 percent of all of their advertisements to warning prospective customers of the inherent dangers associated with their system of hair implant replacement.

Appearances

For the Commission: *Allen R. Caskie.*

For the respondents: *Kamerow & Kamerow* and *Sheldon B. Kamins, Deckelbaum, Wolpert & Ogens*, Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Serr of Washington, D.C., Inc., and Herb Mann, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Serr of Washington, D.C., 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 1219 Connecticut Ave., N.W., Washington, D.C.

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

PAR. 2. Respondents promote, among other products and services, a process called "PERMA-SURG" which is an implant hair replacement system, hereinafter sometimes referred to as the "System." The system involves a surgical procedure whereby a synthetic suture (prolene) is stitched into the scalp of respondents' customers. Hairpieces are then attached to the sutures. Respondents sell, install and maintain the system, except that the surgical procedure itself is performed by a medical doctor.

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers and magazines of general circulation which are distributed across State lines. As a result of such newspaper and magazine advertising, respondents have maintained a substantial course of trade in commerce, as "commerce" is

defined in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper and magazine advertising, have disseminated and caused to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the implant hair replacement system, respondents have made numerous statements and representations in advertisements inserted in newspapers and magazines of general circulation.

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

She'll swear its your own hair* * *so will everybody else!

"PERMA-SURG" is not a hair weave-not a hairpiece.

A revolutionary new medical process.

A licensed M.D. performs this simple cosmetic procedure painlessly and most important, effectively.

Comb it, brush it, wash it in the shower. Sleep in it, swim in it * * * and it won't come off.

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

1. The system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

2. After the system has been applied, the hair applied becomes part of the anatomy like natural hair, and has the following characteristics of natural hair.

(a) The same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;

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

(c) The wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.

3. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur maintenance costs over and above the cost of applying the system.

PAR. 6. In truth and in fact:

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

2. The hairpiece or toupee differs from natural hair in many respects, including, but not limited to, the following:

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

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

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

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

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

PAR. 7. In the course and conduct of their business, respondents, have represented in advertisements the asserted advantages of the system, as hereinbefore described. In many cases, respondents have represented their system to be painless and have not disclosed in such advertisements that surgical procedure is a required step in the system. In no case have respondents' advertisements disclosed that:

(a) Clients may experience discomfort and pain as a result of the

surgical procedure, from the synthetic sutures themselves, and from pulling normally incident to wearing the hairpiece;

(b) Clients will be subject to the risk of irritation, infections, and skin diseases as a result of the surgical procedure and as a result of the synthetic sutures remaining in the scalp;

(c) Permanent scarring to the scalp may result from the required surgical procedures, and as a result of the synthetic sutures remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial competition in commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 9. The use by respondents of the above unfair and deceptive representations and practices and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead consumers, and to unfairly influence consumers to sign contracts for the application of the implant hair replacement system, and to make partial or full payment therefor, without being informed of the seriousness of the surgical procedure, and the possibilities of discomfort, disease or disfigurement related thereto, and related to the continual presence of the synthetic suture in the scalp.

PAR. 10. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by respondents that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for

the purpose of negotiating a settlement by the entry of a consent order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedures described in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Serr of Washington, D.C., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1219 Connecticut Ave., N.W., Washington, D.C.

Respondent Herb Mann is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Serr of Washington, D.C., Inc., a corporation, its successors and assigns and its officers, and Herb Mann, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device or through franchisees or licensees, in connection with the advertising, offering for sale, sale, or distribution of the implant replacement system or other hair replacement product or process involving surgery (hereinafter sometimes referred to as the "System"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication that:

1. The system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

2. After the system has been applied, the hair applied becomes part of the anatomy like natural hair, and has the following characteristics of natural hair.

a. the same appearance in all applications as natural hair, upon normal observation, and upon extreme closeup examination;

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

c. the wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.

3. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur maintenance costs over and above the cost of applying the system.

It is further ordered, That respondents, in advertising, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of synthetic sutures in the scalp, to which hair is affixed.

2. By virtue of the surgical procedure involving implantation of synthetic sutures in the scalp, and by virtue of the synthetic suture remaining in the scalp, there is a risk of discomfort, pain, infection, scarring, and other skin disorders.

3. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in subparagraph two of this paragraph, and such care may involve additional costs for medications and assistance.

4. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided, however*, That in advertisements which consist of less than ten column inches in newspapers and periodicals, and in radio and television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Warning: This application involves surgery whereby synthetic sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicu-

ously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents, in connection with the sale of the system, provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, subparagraphs one (1) through four (4) thereof, and that respondents require that, prior to executing any contract to purchase said system, such prospective purchasers, sign and date the disclosure sheet after the sentence, "I have read the foregoing disclosures and understand what they mean," and that Serr of Washington, D.C., Inc. provide a copy of said disclosure sheet to the customer and retain such signed disclosure sheet for at least three years.

It is further ordered, That, in connection with the sale of the system, no contract for application of the system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, serve a copy of this order upon each present and every future licensee or franchisee, and upon each physician participating in application of respondents' system, and obtain written acknowledgment of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing, (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise

of any licensee or franchisee that fails to abide by the terms of this order. Respondents shall retain such acknowledgments and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' system.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, forthwith distribute a copy of this order to each of their operating divisions or departments.

It is further ordered, That the corporate respondent notify the Commission at least thirty (30) 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, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided*, That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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

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

IN THE MATTER OF

XEROX CORPORATION

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

Docket 8909. Complaint, Jan. 16, 1973-Decision, July 29, 1975

Consent order requiring a Stamford, Conn., manufacturer and developer of office copier equipment, among other things to cease engaging in anticompetitive licensing, patent and marketing arrangements.

Appearances

For the Commission: *Charles W. Corddry III, Jonathan E. Gaines, Robert D. Jacobs, Robert T. Joseph, Richard L. Williams, David I. Wilson, Lloyd E. Oliver (Economist).*

For the respondent: *John R. Murphy, G. Emmett Smith* and *Kaye Scholer*, Stamford, Conn. *Milton Handler, Fierman, Hays & Handler*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Xerox Corporation, hereinafter referred to as Xerox or respondent, has violated and is violating Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I Definitions

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

(a) "Office copier" (hereinafter sometimes referred to as "copier") means a machine for the convenient reproduction of an original document. The term "office copier" includes electrostatic and thermographic process copiers and accessories physically attached to such copiers. Said term does not include either specialized use copiers, such as engineering drawing and microfilm copiers, or offset, mimeograph, or spirit duplicator machines.

(b) "Plain paper copier" means a copier which makes copies on plain, untreated paper.

(c) "Coated paper copier" means a copier which requires the use of chemically treated or coated paper.

II Respondent

PAR. 2. Xerox is a corporation organized and existing under and by virtue of the laws of the State of New York, with its executive office located at Stamford, Conn. Respondent was incorporated in 1906 as the Haloid Company, and its name was changed to Haloid Xerox Inc. in 1958 and to Xerox Corporation in 1961.

PAR. 3. In 1971, Xerox's total revenues were approximately $2 billion, net income after taxes was approximately $213 million, and total assets were approximately $2.2 billion. Xerox's after tax return on stockholder's equity averaged 21.2 percent for the period 1967 through 1971. In 1971, approximately 50 percent of Xerox's total revenues were derived from its domestic business in office copiers and supplies and approximately 25 percent of Xerox's total revenues were derived from Rank Xerox. In 1971, Xerox was approximately the 52nd largest domestic industrial firm in terms of total revenues and approximately the 17th most profitable such firm based on return on stockholder's equity.

III Other Persons

PAR. 4. The Rank Organisation, Ltd. [Rank] is a corporation organized and existing under the laws of the United Kingdom, with principal offices in London, England.

PAR. 5. Fuji Photo Film Co., Ltd. [Fuji] is a corporation organized and existing under the laws of Japan, with principal offices in Tokyo, Japan.

PAR. 6. Rank Xerox, Ltd. [Rank Xerox] is a corporation organized and existing under the laws of the United Kingdom with principal offices in London, England. It was organized by Rank and Xerox for the purpose of manufacturing and distributing office copiers throughout the world except the United States (including United States territories and possessions) and Canada. In 1964, Xerox purchased from Rank certain property rights and assets, including the right to manufacture and distribute Xerox copiers in Central and South America, for $3.3 million plus 5 percent royalties on rentals and sales in said territory. From 1956, when it was organized, until December 1969, Rank Xerox's voting stock was owned equally by Rank and Xerox. In December 1969, Xerox acquired for $12.5 million a 51 percent ownership of said voting stock. In 1971, Rank Xerox had revenues of approximately $500 million, assets of approximately $690 million, and net profits of approximately $196 million.

PAR. 7. Fuji Xerox Co., Ltd. [Fuji Xerox] is a corporation organized and existing under the laws of Japan. It was organized by Rank Xerox

and Fuji for the purpose of manufacturing and distributing office copiers in Japan, Thailand, Cambodia, Laos, Philippines, Vietnam, Indonesia, Korea and Taiwan (Formosa). Fuji Xerox's voting stock is owned equally by Rank Xerox and Fuji.

IV Nature of Trade and Commerce

PAR. 8. The relevant market is the sale and lease of office copiers in the United States, hereinafter referred to as the office copier market. This market includes as a relevant submarket the sale and lease of plain paper office copiers in the United States, hereinafter referred to as the plain paper submarket. The office copier market is dominated by the plain paper submarket and Xerox dominates the plain paper submarket.

PAR. 9. (a) In 1971, revenues from the sale and lease of office copiers were approximately $1.1 billion and total revenues from the sale and lease of office copiers and supplies were approximately $1.7 billion; Xerox accounted for approximately 86 percent of the former and 60 percent of the latter. In 1971, revenues from the sale and lease of plain paper copiers and supplies were approximately $1.0 billion; Xerox accounted for approximately 95 percent of said revenues.

(b) Approximately 25 firms are presently engaged in the office copier market. Of these 23 sell or otherwise distribute coated paper copiers and three sell or otherwise distribute plain paper copiers. After Xerox, the next largest firm in the office copier market accounted for approximately 10 percent of 1971 revenues from the sale or lease of office copiers and the sale of supplies therefor.

PAR. 10. The office copier market has had and continues to have high barriers to entry and barriers to effective competition among existing competitors.

V Jurisdiction

PAR. 11. In the course and conduct of its business, Xerox has shipped or caused to be shipped office copiers to customers located throughout the United States and has also entered into licensing and distribution arrangements with foreign corporations. There is now and has been for many years a constant substantial and increasing flow of Xerox office copiers and Xerox technical information and marketing rights in "commerce" as that term is defined in the Federal Trade Commission Act. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices hereinbelow alleged in this complaint, Xerox has been and is in competition with

other corporations, partnerships, individuals or firms engaged in the sale and distribution of office copiers and supplies.

VI Violations

PAR. 12. (a) Xerox has monopoly power in the relevant market and submarket.

(b) Xerox has the power to inhibit, frustrate, and hinder effective competition among firms participating in the relevant market and submarket.

PAR. 13. Xerox has engaged in marketing acts, practices and methods of competition including, but not limited to,

(a) following a lease only policy pursuant to which Xerox refuses to sell and discourages the sale of its office copiers,

(b) using package leasing plans and quantity discount rental price plans,

(c) discriminating in price among customers,

(d) maintaining a stock of depreciated copiers and planning to use or using such copiers to inhibit, frustrate, or hinder price competition,

(e) announcing new copier models and taking orders thereon before availability of such copiers in response to introduction of competing copiers by actual or potential competitors,

(f) requiring that it be the exclusive source of maintenance and repair service for leased Xerox office copiers,

(g) falsely disparaging competitive supplies,

(h) tying supplies to the lease of office copiers.

PAR. 14. Xerox has engaged in acts, practices and methods of competition relating to patents including, but not limited to,

(a) monopolizing and attempting to monopolize patents applicable to office copiers,

(b) maintaining a patent barrier to competition by attempting to recreate a patent structure which would be equivalent in scope to expired patents,

(c) developing and maintaining a patent structure of great size, complexity, and obscurity of boundaries,

(d) using its patent position to obtain access to technology owned by actual or potential competitors,

(e) entering into cross-license arrangements with actual or potential competitors,

(f) including in licenses under United States Patent Number 3,121,006 provisions having the effect of limiting licensees to the manufacture and sale of only coated paper copiers,

(g) offering patent licenses applicable to plain paper copiers with

provisions which, in effect, limit the licensee to the manufacture or sale of low speed copiers,

(h) including in patent licenses provisions having the effect of precluding the licensee from utilizing Xerox patents in the office copier market,

(i) entering into and maintaining agreements with Battelle Memorial Institute, Inc. and Battelle Development Corporation, Delaware corporations with principal offices at Columbus, Ohio, hereinafter referred to collectively as Battelle, pursuant to which Battelle is required to convey to Xerox all patents, patent applications, and know-how coming into its possession relative to xerography.

(j) preventing actual and potential competitors from developing plain paper copiers while permitting them to develop coated paper copiers.

PAR. 15. (a) For many years, and at least as of 1969, Rank Xerox was a substantial, viable, separate corporation capable of competing in the office copier market and plain paper submarket.

(b) Xerox has entered into and maintained agreements with Rank and Rank Xerox which have effectively divided up the world market for plain paper copiers among Xerox, Rank Xerox and Fuji Xerox.

(c) In December 1969, Xerox acquired a 51 percent interest in Rank Xerox voting stock and continues to maintain such interest.

PAR. 16. Xerox has engaged and is engaging in acts, practices and methods of competition as hereinabove alleged, for the purpose and with effect of

(a) monopolizing the office copier market and the plain paper submarket,

(b) preserving, maintaining, and furthering a highly concentrated market structure with high barriers to entry,

(c) hindering, restraining, foreclosing and frustrating competition in the office copier market and plain paper submarket and the entry of new competitors into said markets,

(d) materially reducing the independence of Rank Xerox, the influence of Rank Xerox as a potential competitor and the probability that Rank Xerox would enter competition in the office copier market or plain paper submarket,

(e) foreclosing Rank, Fuji, Rank Xerox, and Fuji Xerox from competing with Xerox in the Western Hemisphere, including the United States, and foreclosing Xerox from competing in export trade from the United States,

(f) depriving consumers of the benefits of competition.

PAR. 17. The aforesaid acts, practices, and methods of competition in commerce are unfair and constitute violations of Section 5 (a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the Respondent named in the caption hereof has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45; and

Respondent and complaint counsel, by joint application filed Oct. 6, 1974, having moved to have the matter removed from adjudication for the purpose of submitting an executed agreement containing consent order, and the administrative law judge having certified such application to the Commission; and

The Commission, by order issued Oct. 10, 1974, having withdrawn this matter from adjudication pursuant to Section 2.34(d) of its rules; and

The Commission having considered and accepted said agreement and placed it in the public record for a period of sixty (60) days, having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules and the recommendations of its staff, and having withdrawn its acceptance of said agreement; and

Respondent and complaint counsel having thereafter submitted a revised agreement containing consent order dated Mar. 27, 1975, and modifications thereof dated Apr. 21, 1975 and July 14, 1975; and

The Commission having considered and accepted the agreement dated Mar. 27, 1975 and placed it on the public record for a period of sixty (60) days, having held a public hearing respecting said agreement on June 4, 1975, and having duly considered the comments filed pursuant to Sections 2.34(b) and 3.25(d) of its rules during the 60 day period and the matters presented at the public hearing; and

The executed agreement dated Mar. 27, 1975, as modified, containing the following consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated, and waivers and other provisions as required by the Commission's rules,

Now in conformity with the procedure prescribed in Section 3.25(d) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Xerox Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at High Ridge Park, Stamford, Conn.

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

ORDER

I

It is ordered, That the following definitions shall apply in this order:

A. "Xerox" means respondent Xerox Corporation, its *subsidiaries* (except *Rank Xerox* and *Fuji Xerox*), successors and assigns and its directors, officers, employees, agents and representatives. "Rank Xerox" means Rank Xerox Limited, a corporation organized and existing under the laws of the United Kingdom. "Fuji Xerox" means Fuji Xerox Company Limited, a corporation organized and existing under the laws of Japan. "Rank Xerox" and "Fuji Xerox" each includes the *subsidiaries*, successors and assigns of said corporations and their directors, officers, employees, agents and representatives.

B. "Person" means any individual, partnership, firm, association, corporation or other legal or business entity [other than the Commission, *Xerox*, *Rank Xerox*, *Fuji Xerox*, The Rank Organisation Limited (so long as it is a party to a joint venture with *Xerox* relating to *office copier products*), Fuji Photo Film Co., Ltd. (so long as it is a party to a joint venture with Xerox or *Rank Xerox* relating to *office copier products*), and any foreign government (or any entity whose ownership is controlled thereby)], their *subsidiaries*, successors and assigns, and directors, officers, agents and representatives.

C. "Subsidiary" means a *person* more than fifty percent (50%) or, at the option of the *licensee* with respect to its *subsidiaries*, at least twenty percent (20%) of whose outstanding shares or stock, representing the right (other than as affected by events of default) to vote for the election of directors or other managing authority, are now or hereafter owned or controlled, directly or indirectly, by *Xerox*, *Rank Xerox*, *Fuji Xerox* or *Person*, as the case may be, but such *person* shall be deemed to be a *subsidiary* only so long as such ownership or control exists.

D. "Licensee" means any *person* licensed by *Xerox*, *Rank Xerox* and/or *Fuji Xerox* pursuant to the terms of Paragraph II of this order, including all *affiliates* of such *person*. *Affiliate* means (1) any *person* and *subsidiaries* thereof, engaged in the development, manufacture, use, lease or sale of *office copier products* at least fifty percent (50%) or, at the option of the *licensee*, at least twenty percent (20%) of whose outstanding shares or stock, representing the right (other than as affected by events of default) to vote for the election of directors or other managing authority, are now or hereafter owned or controlled,

directly or indirectly, by the licensed *person;* and (2) any *person* and *subsidiaries* thereof, which now or hereafter own or control, directly or indirectly, more than fifty percent (50%) or, at the option of the *licensee*, at least twenty percent (20%) of the outstanding shares or stock, representing the right (other than as affected by events of default) to vote for the election of directors or other managing authority of the licensed *person*, but only so long as such ownership or control exists.

E. "Patent" means some, all or any portion of all patents (including utility models, design patents, certificates of addition and the like), and all patents resulting from continuations-in-part, divisions, renewals, reissues and extensions based on said patents or the applications therefor, but only insofar as it relates to an *office copier product.*

F. "Issued" means published and either issued, granted, sealed or registered.

G. "Corresponding Patents" means two or more *patents*, each of which has *issued* in a different country, is entitled to the same priority date (or could have been if timely filed) and is based upon the same conception and reduction to practice.

H. "Present Patent" means a United States or *foreign patent issued* on or before the date of issuance of this order and all *corresponding patents* regardless of the date they are *issued.*

I. "Future Patent" means a United States or *foreign patent* other than a *present patent issued* on a patent application having an effective filing date prior to three years after the date of issuance of this order or *issued* during the six years following the date of issuance of this order, and all *corresponding patents*, regardless of the date they are *issued.*

J. "Foreign Patent" means a *patent issued* by a country other than the United States.

K. "Xerox Patent" means a *patent* which is owned or controlled by *Xerox, Rank Xerox* or *Fuji Xerox* or under which one or more of them has the power to grant licenses or sublicenses to *persons. Xerox*' power to comply with this order with respect to *patents* owned or controlled by *Rank Xerox* or *Fuji Xerox*, or under which they have the power to grant licenses or sublicenses, is confirmed in the undertakings of *Rank Xerox* and *Fuji Xerox* which have been submitted to the Commission.

L. "Order Patent" means a *present* or *Future* Xerox *patent* except one licensed pursuant to paragraph X(b) of this order.

M. A "Patent of the Licensee" means a *patent* which is owned or controlled by a *licensee*, or a *patent* under which such *licensee* has the power to grant licenses or sublicenses.

N. "Improvement Patent" means a *patent* on an invention which, if

practiced, would infringe a licensed *patent* and which *improvement patent* is owned or controlled by the licensee of such *patent* or is one under which such licensee has the power to grant licenses or sublicenses. Determination of what is an *improvement patent* shall be made by reference to a licensed United States *patent*, if any, or if there is no such United States *patent*, by reference to the licensed *foreign patent*.

O. "Office Copier" means a machine for the convenient reproduction of an original document and accessories physically attached to such machine. The term "Office Copier" refers to all xerographic and nonxerographic office copiers, including but not limited to polychromatic color office copiers, high speed office copiers (such as the Xerox Model 9200), hybrid offset office copiers (such as the AMCD) and office copiers adapted to receive micro input as well as hard copy input, but does not include specialized use copiers (such as engineering drawing and microfilm copiers), or offset, stencil, or spirit duplicator machines.

P. "Office Copier Product" means an *office copier* and parts, components, raw materials and consumable supplies for use therein, including but not limited to photosensitive elements, refined selenium, metal alloys for machine parts, toner, developer, paper, and containers (such as toner cartridges) for consumable supplies.

Q. "Royalty-Bearing Product" means (1) an *office copier*, (2) toner, developer, paper, and similar consumable supplies, (3) containers (such as toner cartridges) for consumable supplies and (4) photosensitive elements, any of which are covered by a licensed *patent* other than one which is royalty-free.

R. "Net Revenues" shall mean the total revenues received by the licensee from the lease or sale, as the case may be, of a *Royalty-bearing product*, or in the case of a lease of a *royalty-bearing product*, at the option of the licensee, the published selling price for such *royalty-bearing product*. Any of the following items, or any comparable items, may be deducted from the aforesaid total revenues or published selling price when they are separately stated on the invoice:

(a) Packing costs;

(b) Actual transportation and insurance costs from place of shipment to point of installation;

(c) Excise, sales, use and property taxes;

(d) Import and export duties and taxes;

(e) The fair market value of replacement parts and components; which are not covered by a licensed *patent;*

(f) The fair market value of consumable supplies which are not covered by a licensed *patent* whether or not they are in a licensed container;

(g) Actual credit to customers on account of any *royalty-bearing product* which is not accepted by the customer;

(h) Costs of servicing or repairing the *royalty-bearing product* excluding the costs of parts or components covered by a licensed *patent.*

To the extent that the amounts charged for the above items can be verified by referring to separate *bona fide* offers of such services or products, or to separate documents as in the case of taxes or duties, such amounts need not appear on the invoice.

S. "Polychromatic Color Office Copier Product" means an *office copier product* specially adapted to produce multicolor copy.

T. "Know-how" means all written materials used by Xerox Corporation in manufacturing, refurbishing, reconditioning, retrofitting and servicing its *office copier products* which Xerox Corporation is not specifically prohibited by a legally enforceable obligation from disclosing, including but not limited to blueprints, drawings, formulae, manuals, process descriptions, production methods, specifications, quality control and test standards and computer programs.

U. "Commercially available" means generally available for immediate sale or lease to consumers in an area at least as large as an area served by at least one sales branch of the seller or lessor and on publicly announced terms.

V. "IBM" means International Business Machines Corporation, a corporation organized and existing under the laws of the State of New York, and its *subsidiaries*, successors and assigns, and directors, officers, employees, agents and representatives.

W. "United States" means the United States of America, its territories or possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

II

It is further ordered, That XEROX shall forthwith grant or cause to be granted to any PERSON making written application to *Xerox* at any time under this order a nonexclusive license for the full unexpired term under any, some or all *order patents* to make, have made, use or vend any, some or all of the following:

(1) *Office copiers* (including the right to have made parts, components and raw materials for use therein), (2) toner, developer, paper and similar consumable supplies, (3) toner, developer, paper and similar consumable supplies which may be used in future OFFICE COPIERS, (4) containers (such as toner cartridges) for consumable supplies, and (5) photosensitive elements. However, at *Xerox'* option exercised on a nondiscriminatory basis, the effective date of licenses pertaining to

polychromatic color office copier products may be up to three years from the date of issuance of this order for *present patents* and three years from the date the *patent* is *issued* for *future patents.* Nothing in any license granted pursuant to the terms of this order shall be deemed to prohibit a *licensee* from using a licensed *office copier* in conjunction with any other device for use in addition to the convenient reproduction of an original document.

III

Xerox, Rank Xerox and *Fuji Xerox* shall agree not to sue any *licensee,* or customers or suppliers of the *licensee,* for *patent* infringement or royalties with respect to any *office copier,* photosensitive element, toner, developer, paper or container (such as toner cartridges) for consumable supplies manufactured by or for the *licensee* prior to the date of issuance of this order, or to maintain any such suit.

IV

It is further ordered, That no license of an *order patent* granted pursuant to the terms of this order shall contain or be conditioned upon any restriction, except as hereinafter provided:

A. The *licensee* may, at his option, designate up to a total of three *order patents* which shall be licensed or sublicensed royalty-free; *Provided, however,* That, in each country, the *licensee* may substitute another *order patent* as royalty-free for any *order patent* previously designated as royalty-free which the *licensee* has discontinued using in that country. On *order patents* other than the three designated as royalty-free by the *licensee, Xerox* may, in its sole discretion, charge a royalty not to exceed 1/2 percent per PATENT up to a maximum accumulated royalty of 1 1/2 percent of the *licensee's net revenues* for each *royalty-bearing product* which is manufactured, leased or sold by or for the *licensee.* With respect to any *royalty-bearing product* of the *licensee* which the *licensee* uses or consumes himself, the royalty shall be computed on the basis of the *net revenues* that would have been received by the *licensee* in an ordinary commercial transaction. The royalty shall be computed separately for each *royalty-bearing product* on the basis of *order patents* subject to royalty which are used in such *royalty-bearing product.* In no event shall more than three royalty-free *patents* apply to any one *royalty-bearing product* at any one time irrespective of the number of licenses granted by *Xerox* with respect to such *royalty-bearing product.* For the purpose of this Paragraph IV A, a *patent* and all *Corresponding Patents* in all countries shall count as

one *patent*. The *licensee* need not take a license under any *corresponding patent*.

B. *Xerox* may require that a *licensee* agree not to sue *Xerox*, *Rank Xerox* or *Fuji Xerox*, or their customers or suppliers, for PATENT infringement or royalties with respect to any *office copier*, photosensitive element, toner, developer, paper or container (such as toner cartridges) for consumable supplies manufactured by or for them prior to the date of issuance of this order, or to maintain any such suit.

C. To the extent the *licensee* has the power to grant licenses or sublicenses, *Xerox* may require the grant to *Xerox*, *Rank Xerox* and *Fuji Xerox* of a nonexclusive license for the full unexpired term under any, some or all *patents* of the *licensee* to make, have made, use or vend any, some or all of the following: (a) *office copiers* (including the right to have made parts, components, and raw materials for use therein), (b) toner, developer, paper and similar consumable supplies, (c) toner, developer, paper, and similar consumable supplies which may be used in future *office copiers*, (d) containers (such as toner cartridges) for consumable supplies, and (e) photosensitive elements, as hereinafter provided in this Paragraph IV C.

(1) *Xerox* may (at any time) require the license of one *patent of the licensee* to *Xerox*, *Rank Xerox* and *Fuji Xerox* for each *Xerox patent* licensed to the *licensee* in excess of the first three *order patents* licensed to the *licensee* but in so doing *Xerox* may not require the license of (a) a greater number of *present patents of the licensee* than the number of *Xerox present patents* licensed to the *licensee*, or (b) a greater number of *future patents* of the *licensee* than the number of *Xerox future patents* licensed to the *licensee*. Notwithstanding the foregoing, for purposes of determining how many *present patents* or *future patents of the licensee* which *Xerox*, *Rank Xerox* and *Fuji Xerox* are entitled to license, the *licensee* shall have the right, if exercised at the time of first receipt of a license from *Xerox* under Paragraph II of this order, to have the first three *order patents* licensed from *Xerox* count, at the *licensee's* option, as *Xerox present patents*, or as *Xerox future patents* or as any combination of *Xerox present patents* and *Xerox future patents*, irrespective of the actual character of such *order patents*. For the purpose of determining the number of *patents* under this Paragraph IV C(1), (a) a *patent* and all *corresponding patents* in all countries shall count as one *patent*, and (b) the substitution of a previously unlicensed *order patent* shall count as an additional *patent* unless the *patent* for which substitution is made was dedicated, revoked, disclaimed, or has expired or lapsed, or was held invalid or unenforceable. *Xerox*, *Rank Xerox* and *Fuji Xerox* need not take a license under any *corresponding patent*. A *licensee* shall have no

obligation to grant a license to *Xerox*, *Rank Xerox* or *Fuji Xerox* in any country in which, by reason of governmental action, *Xerox* has been prevented from granting or causing to be granted a *patent* license requested pursuant to this order. *Xerox* shall have no obligation to grant licenses in any country in which, by reason of governmental action, the *licensee* is prevented from granting licenses to *Xerox*, *Rank Xerox* or *Fuji Xerox* pursuant to the terms of this Paragraph IV C(1).

(2) The license of *present patents of the licensee* shall not become effective until four years after the date of issuance of this order or four years after an *office copier product* (of the *licensee* or its licensee) using an invention covered by the *patent* first becomes *commercially available*, whichever is later. The license of *future patents of the licensee* shall not become effective until four years after the date the *future patent of the licensee* is *issued* or four years after an *office copier product* (of the *licensee* or its licensee) using an invention covered by the *patent* first becomes *commercially available*, whichever is later. This Paragraph IV C(2) shall not apply to IBM, except that IBM may require that the effective date of licenses pertaining to *polychromatic color office copier products* not become effective for up to three years from the date of issuance of this order for *present patents* and three years from the date IBM's *future patents* are *issued*. With respect to *corresponding future patents* the date such *patents* are *issued* shall be the date that the first such *corresponding future patent* is *issued*.

(3) *Xerox* may (at any time) require the immediate license to *Xerox*, *Rank Xerox* and *Fuji Xerox* of any of the *present* or *future patents of the licensee* (a) which would be infringed by a *Xerox*, *Rank Xerox* or *Fuji Xerox office copier* manufactured by any of them following the date of issuance of this order if the invention covered by the *patent* is the same as that embodied in an *office copier* manufactured by any of them prior to the date of issuance of this order, or (b) which would be infringed by a *Xerox*, *Rank Xerox* or *Fuji Xerox office copier product* which any of them makes *commercially available* during the six years following the date of issuance of this order if the invention of the *patent* was embodied in a device which, as of the first publication or public use anywhere in the world of the invention covered by the *patent of the licensee* or application therefor (i) actually had been built and incorporated in an engineering model or prototype model of the *office copier* by *Xerox*, *Rank Xerox* or *Fuji Xerox* and (ii) was part of a *Xerox*, *Rank Xerox* or *Fuji Xerox* funded product program. As used in this Paragraph IV C(3), "engineering model" means the first complete assembly of all the sub-assemblies of the *office copier;* and "prototype model" means the product development stage which follows the engineering model, if any. Licenses granted pursuant to this Paragraph

IV C(3) shall not be subject to the provisions of Paragraph IV C(1) (except that they shall count for the *licensee* as *patents* licensed to *Xerox*, *Rank Xerox* and *Fuji Xerox* if and when they become entitled to a license pursuant to that paragraph) or Paragraph IV C(2), but shall be subject to all other provisions of this order. The burden of establishing the right to a license under this Paragraph IV C(3) shall be on *Xerox*.

(4) *Xerox* may require a *licensee* to grant to *Xerox*, *Rank Xerox*, and *Fuji Xerox* a nonexclusive license under all *improvement patents* on *Xerox patents* licensed to the *licensee*. Such licenses shall not be subject to the provisions of Paragraph IV C(1) (except that *improvement patents of the licensee* shall count for the *licensee* as *patents* licensed to *Xerox*, *Rank Xerox*, and *Fuji Xerox* if and when they become entitled to a license pursuant to that paragraph) but shall be subject to all other provisions of this order.

(5) *Xerox* shall grant to the *licensee* a nonexclusive license under all *Xerox improvement patents* on *patents* licensed to *Xerox*. Such licenses shall be subject to all the provisions of this order except that they shall not count for *Xerox* as *patents* licensed by *Xerox*, *Rank Xerox*, and *Fuji Xerox* for purposes of Paragraph IV C(1).

(6) The *licensee* may charge *Xerox*, *Rank Xerox* and *Fuji Xerox* a reasonable royalty for *patents* licensed to any or all of them pursuant to this order, computed on the basis of the *net revenues* of *Xerox*, *Rank Xerox*, and *Fuji Xerox* for each *royalty-bearing product* which they manufactured, leased or sold. With respect to any *royalty-bearing product* of *Xerox*, *Rank Xerox* and *Fuji Xerox*, which they use or consume themselves, the royalty shall be computed on the basis of the *net revenues* that would have been received in an ordinary commercial transaction. The royalty shall be computed separately for each *royalty-bearing product* on the basis of the *patents* which are used in such *royalty-bearing product*.

(7) *Xerox*, *Rank Xerox* and *Fuji Xerox* may require that they be permitted to sublicense any PERSON in which they own, directly or indirectly, 50 percent or less, but not less than 20 percent of the voting stock if such *person* makes its *present* and *future patents* available for licensing pursuant to Paragraph II of this order. All such *persons* shall be identified to anyone making written request, and a list of all such *persons* current as of the date of issuance of this order shall be filed on the public record of the Commission. Any changes in said list shall be filed with the Commission within 30 days after they occur.

(8) A license to *Xerox* pursuant to this Paragraph IV C shall contain the provisions specified in Paragraphs IV H and IV I of this order and

may contain the provisions specified in Paragraphs IV D, IV E, IV F, IV G, and IV J of this order.

(9) If *Xerox* grants a license under *order patents* either pursuant to the terms of Paragraph II of this order or otherwise, the license agreement shall contain the irrevocable covenant of the licensee to license such of its *patents* as are licensed to *Xerox* on reasonable terms and conditions (including the license to itself of its licensees' *patents* or *improvement patents*) to any other *person* who is entitled to a license from *Xerox* pursuant to Paragraph II of this order, Provided That such license need not be effective prior to the effective date of the licensee's license to *Xerox*. Within 60 days following execution of a license agreement subject to this Paragraph IV C (9), *Xerox* shall submit to the Commission a copy thereof *in camera*.

D. Reasonable provisions may be made for the retention of books and records and for periodic royalty reports by the licensee to the manager of patent licensing of the licensor, and for inspection of such books and records by an independent auditor or any other person reasonably acceptable to both the licensor and the licensee who shall report to said manager only the amount of the royalty due and payable. The manager of patent licensing of the licensor shall not disclose the content of said periodic royalty reports to any director, officer, employee, agent or representative of the licensor other than the members of his staff and employees necessarily involved in recording and depositing checks in a routine manner, who shall be similarly bound, unless the royalty owed is not timely paid. In the event that the licensor does not have a manager of patent licensing, a mutually agreeable employee of the licensor shall be designated in his stead.

E. Notwithstanding any other provision of this order, any party taking a sublicense under the terms of this order may be required to reimburse the sublicensor for any payments it is legally required to make and does make to the original licensor on account of activities of the sublicensee under any sublicense granted pursuant hereto.

F. Reasonable provisions may be made for cancellation of the license granted to the licensee upon failure of the licensee to make the reports, pay the royalties, or permit the inspection of his books and records as hereinbefore provided, and, upon a wrongful act of the *licensee* respecting the restrictions on use or disclosure of *know-how* contained in Paragraph VII of this order, for *Xerox* to apply to the Commission for leave to cancel said license, in which event the decision of the Commission shall be final and non-appealable by either *Xerox* or the *licensee*.

G. The license may be nontransferable.

H. The license must provide that the licensee may cancel the license

in whole or as to any specified PATENTS at any time by giving 30 days notice in writing to the licensor; however, the licensor shall have the option to continue in effect any right granted to the licensor pursuant to Paragraph IV C of this order.

I. The license must provide for the arbitration specified in Paragraph VIII of this order and for suspension thereof pursuant to Paragraph VIII C of this order.

J. In granting a license pursuant to Paragraph II of this order, there shall be no discrimination by *Xerox*, *Rank Xerox*, *Fuji Xerox* or any *person* in the royalty charged as among royalty-paying *licensees* who procure the same rights under the same *patents;* but nothing herein contained shall prevent *Xerox*, *Rank Xerox*, *Fuji Xerox* or any *person* from negotiating nonexclusive licenses and cross-licenses outside the terms (except Paragraph IV C(9) of this order) of this order with anyone who so elects.

V

It is further ordered, That nothing herein shall be deemed to prevent any *licensee* or applicant for a license from attacking in any proceeding or controversy the validity, scope or enforceability of any *present* or *future patent*, nor shall this order be construed as imputing any validity, enforceability or value to any such *patent.*

VI

It is further ordered, That *Xerox* shall allow each *person* who is a licensee of a *Xerox patent* on the date of issuance of this order to obtain a license pursuant to the terms of this order; however, *Xerox*, *Rank Xerox* and *Fuji Xerox* shall have the right to continue in effect any industrial property rights under the terms previously granted to *Xerox*, *Rank Xerox* or *Fuji Xerox* by the licensee, and such licensee shall have the right to continue in effect any industrial property rights under the terms previously granted to the licensee by *Xerox*, *Rank Xerox* or *Fuji Xerox.*

VII

It is further ordered, That:

A. During the period ending five years after the date of issuance of this order, *Xerox* shall make available to *licensees* of United States *order patents* under a license pursuant to the terms of this order who make written application therefor all *know-how* (1) in existence on the date of issuance of this order or (2) made available to any other *United States* manufacturer (except a supplier to *Xerox*) or *United States*

marketer of *office copier products* for use in connection with such PRODUCTS during the five year period. The delivery of the *know-how* requested shall begin within 30 days and shall be completed within 120 days after the initial application therefor is received by *Xerox;* the response to subsequent requests shall be completed within a reasonable period of time. Such *know-how* shall be of such a nature as to enable one skilled in manufacturing electro-mechanical office machinery and in the technologies embodied in *office copier products* or comparable technologies to manufacture, refurbish, recondition and service Xerox Corporation's *office copier products.* Upon written application, *Xerox* shall provide written clarification respecting such *know-how* where such clarification is reasonably necessary. *Xerox* may make a reasonable charge for the cost of collecting and duplicating *know-how* which it discloses and for the time spent in clarification. At the option of such *licensee, Xerox* shall disclose *know-how* pertaining to photosensitive elements, supplies, raw materials and particular *office copier* models and shall limit its charge to such *know-how. Xerox* may require the *licensee* to agree that all *know-how* disclosed to the *licensee* by *Xerox* shall be considered a *Xerox* trade secret and to undertake, in good faith, to use the *know-how* only in connection with the manufacture in the *United States* of *office copier products* by or for the *licensee* and not to disclose or permit the disclosure of the *know-how* to anyone other than a supplier who is or will be manufacturing in the *United States* and who enters into a similar agreement and undertaking respecting disclosure and use, unless the *licensee* can establish that such *know-how* (1) was previously known to the *licensee* prior to the disclosure by *Xerox,* or (2) is or becomes part of the public domain through no wrongful act of *licensee,* or (3) is subsequently otherwise legally acquired by *licensee,* or (4) was or is disclosed by *Xerox* to third parties on a non-confidential basis.

B. Commencing 120 days after the date of issuance of this order *Xerox* shall make available to *know-how* licensees a list of the *persons* whose *know-how Xerox* claims to be prohibited from disclosing. Such list shall be subject to the restrictions on use and disclosure of *know-how* provided in this Paragraph VII. *Xerox* need not make *know-how* available to IBM.

VIII

It is further ordered, That:

A. Upon receipt of a written application for a *patent* license or for a *patent* license and disclosure of *know-how* under the terms of this order, *Xerox* shall advise the applicant in writing of the terms of such license and/or *know-how* disclosure. If a dispute arises between *Xerox*

and a *licensee* or applicant regarding their respective rights under this order (except where certain matters are specifically referable to the Commission as provided in Paragraph IV F of this order), and if the parties to the dispute are unable to resolve it within 90 days after the existence of such dispute is communicated in writing to *Xerox* or to the *licensee* or applicant, the dispute shall be determined by arbitration pursuant to this Paragraph VIII. Notwithstanding the provisions of Paragraph V of this order, no dispute between *Xerox* and a *licensee* or applicant with respect to the validity, enforceability, infringement or scope of any *patent* shall be subject to arbitration pursuant to this order.

B. Unless otherwise agreed to by the parties, arbitration shall be held at a location in the *United States* designated by the *licensee* or applicant and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrator shall be final and binding on both parties. The arbitrator shall, upon a proper showing, issue protective orders and/or receive evidence *in camera* in the same manner as an administrative law judge of the Federal Trade Commission.

C. Within 10 days after the initiation of arbitration, *Xerox* shall notify the Commission of the parties to the arbitration, the name of the arbitrator, and the nature of the dispute. *Xerox* shall notify the Commission of the dates of arbitration hearings and other arbitration proceedings, if any, as soon as possible. Copies of all papers in the nature of pleadings shall be served upon the Commission, and the Commission or its designee shall have the right to attend any arbitration proceeding. The Commission may, in its sole discretion, at any time before evidence has been submitted, suspend the provisions of this Paragraph VIII respecting arbitration and itself resolve any or all disputes subject thereto. The Commission will not assert any claim that *Xerox* has violated this order with respect to the subject matter of the arbitration where *Xerox* has complied with the award of the arbitrator.

D. Pending the completion of any negotiation, arbitration or Commission action respecting a dispute subject to this Paragraph VIII, *Xerox* and the applicant shall enter into a license, and *Xerox* shall make disclosure of *know-how*, pursuant to the terms of this order with respect to the matters not in dispute. Upon conclusion of any negotiation, arbitration or Commission action, the disputed license or *know-how* disclosure may provide for such adjustments as the parties agree to or as the arbitrator or Commission, as the case may be, deems appropriate.

IX

It is further ordered, That for the period ending six years after the date of issuance of this order, *Xerox* shall make available (a) English language translations of all *order patents* issued after the date of issuance of this order to *Xerox*, *Rank Xerox*, and *Fuji Xerox* by France, The Federal Republic of Germany, Japan, and The Netherlands, and (b) copies of all English language *corresponding patents* at a reasonable charge not to exceed the cost of reproduction and, if the translation is made at the instance of the requesting *person*, the cost of translation.

X

It is further ordered, That for the period ending 10 years after the date of issuance of this order, *Xerox* shall not, directly or indirectly, acquire from any *person* (including The Rank Organisation Limited and Fuji Photo Film Co., Ltd.) any exclusive rights, whether by license or otherwise to any *patents* or know-how for use in *office copier products* except those (a) resulting from the work of *Xerox*, *Rank Xerox* or *Fuji Xerox* employees, *Xerox*, *Rank Xerox* or *Fuji Xerox* consultants, or research organizations doing sponsored research for *Xerox*, *Rank Xerox* or *Fuji Xerox*, or (b) under which *Xerox* grants or causes to be granted to any *person* making written application a non-exclusive, royalty-free, unrestricted license to make, have made, use or vend *office copier products* under such *patent* or know-how. Any exclusive rights acquired by *Xerox* in accordance with part (a) of this Paragraph X shall be on such terms as will permit *Xerox* to comply with the licensing provisions of Paragraph II of this order. This Paragraph X shall not apply to any acquisition or exclusive license of a *foreign patent* or of the right to use the know-how in a foreign country by *Rank Xerox* or *Fuji Xerox*.

XI

It is further ordered, That *Xerox* shall not dispose or permit the disposition of any *patents* or rights thereunder so as to deprive it of the power to grant or cause to be granted the licenses required by this order.

XII

It is further ordered, That for the period ending 10 years after the date of issuance of this order *Xerox* shall not, directly or indirectly, acquire any interest in a *person* (including The Rank Organisation

Limited and Fuji Photo Film Co. Ltd.) engaged in the manufacture, sale, lease or development of *office copiers*, or toner, developer, paper or photosensitive elements used in *office copiers* or form a joint venture involving any such products with any such *person* (except The Rank Organisation Limited or Fuji Photo Film Co. Ltd. so long as either is a party to a joint venture with *Xerox* or *Rank Xerox* relating to *office copier products*). This paragraph shall not apply (1) to the acquisition by XEROX of an interest in or joint venture with any *person* in which at the time of the acquisition or joint venture it had a stock interest, other than a PERSON in which *Xerox* had such an interest by reason of an investment in employee funds such as pension or retirement plans (*Xerox* shall promptly file with the Commission a list of the *persons* in which it has a stock interest as of the date of issuance of this order and to which this exception is to apply. Said list shall be updated as part of the annual compliance reports required by Paragraph XIX of this order), or (2) to any acquisition by *Rank Xerox* or *Fuji Xerox* of a *person* not engaged in the manufacture, sale, lease or development of *office copiers* but who is engaged in the manufacture, sale, lease or development, solely outside of the *United States*, of toner, developer, paper or photosensitive elements used in *office copiers*, or to the formation of a joint venture by *Rank Xerox* or *Fuji Xerox* involving any such products with any such PERSON, or (3) to a joint venture involving new capacity for the production of paper with a *person* other than one engaged in the manufacture, sale, lease or development of *office copiers*, or toner, developer or photosensitive elements used in *office copiers*, or (4) to the acquisition by *Xerox* of an interest in any PERSON the sole purpose of which is an investment in employee funds such as pension or retirement plans. Such acquisitions, however, shall not be deemed immune or exempt from the provisions of the antitrust laws (including the Federal Trade Commission Act) by reason of anything contained in this order.

XIII

It is further ordered, That during the period ending 10 years after the date of issuance of this order, *Xerox* shall not, directly or indirectly, make contracts in the *United States* restricting employees working in its *office copier products* business from in the future working for any other *person*, provided that *Xerox* may make contracts which prohibit the use or disclosure of trade secrets and confidential information as prohibited by *Xerox*' present form of "Proprietary Information and Conflict of Interest Agreement" which has been submitted to the Commission.

XIV

It is further ordered, That during the period commencing on a date not later than nine months after the date of issuance of this order and ending five years after said commencement date, *Xerox* shall not, directly or indirectly, utilize in the *United States* any price plan for the sale or lease of an *office copier* which depends upon the customer purchasing or leasing one or more additional *office copiers* of a different model. Any minimum qualifying level for a pricing plan or price schedule respecting any *office copier* shall be based solely on volume, revenues, number of *office copiers*, or the like of the same model.

XV

It is further ordered, That:

A. During the period ending 10 years after the date of issuance of this order, *Xerox* shall, in addition to instructing its employees in the *United States* not to comment on the quality of competitive toner or developer, place a notice in a location conspicuous to the key operator on each *office copier* sold or leased by it in the *United States* stating the following: "Xerox Corporation manufactures and distributes toner and developer for use in this machine. Other suppliers may also provide toner and developer for this machine. It may be necessary to adjust the machine to accommodate toner or developer which is provided by either *Xerox* or any other supplier."

B. In the event that *Xerox* shall publish reasonable specifications for the toner and developer used in a particular machine, *Xerox* (1) may include the following additional statement in the aforementioned notice: "The toner and developer used in this machine must comply with specifications published by Xerox Corporation.," (2) shall promptly notify all suppliers of toner and developer, who request such notification, of any changes in such specifications, and shall promptly notify a supplier when his toner or developer does not comply with such specifications in a letter signed by an officer of *Xerox*, and (3) may not require suppliers of toner or developer for *Xerox*' *office copiers* to provide to *Xerox*' customers a certification that the toner or developer supplied by them meets such specifications.

C. *Xerox* shall promptly notify all suppliers of toner and developer, who request such notification, of changes in *Xerox office copiers* which may affect the useability of the toner and developer in such *office copiers*.

D. Nothing herein contained shall prevent *Xerox* from advising a customer, in a letter signed by an officer of *Xerox*, that a non-*Xerox*

toner or developer is not useable in a particular *Xerox office copier*, provided that *Xerox* simultaneously advises the supplier of such toner or developer in a letter signed by an officer of *Xerox*, that (1) in the opinion of *Xerox*, the supplier's toner or developer is not useable in a particular *office copier* model, and (2) disputes regarding the useability of the toner and developer are subject to arbitration pursuant to this order. Disputes regarding the useability of non-*Xerox* toner and developer or the reasonableness of *Xerox* specifications shall be subject to arbitration in accordance with Paragraph VIII (b) and (c) of this order.

E. *Xerox* may not, directly or indirectly, require in the *United States* that it be the sole supplier of toner or developer for leased or sold *office copiers;* however, it may impose such a requirement with respect to a new model during the six months from the date such model first becomes *commercially available.* For purposes of this Paragraph XV, "new model" includes collectively the basic *office copier* model and all subsequent models not embodying material variations in the xerographic processor thereof.

XVI

It is further ordered, That during the period ending 10 years after the date of issuance of this order, (1) *Xerox* shall not in the *United States* take orders or announce that it will take orders for the sale or lease of an OFFICE COPIER more than three months prior to the time when it is reasonably expected to be *commercially available,* (2) *Xerox* shall not promote any new *office copier* in any area of the United States more than three months prior to the time that *Xerox* reasonably expects such new *office copier* to be first *commercially available* in that area except for national advertising which includes a statement that the model is available only in the areas where *Xerox* reasonably expects such model to be *commercially available,* and (3) at the time *Xerox* announces that it will take orders for the lease of an *office copier* in the United States, it shall also announce the selling price of such *office copier.*

XVII

It is further ordered, That within 30 days after the date of issuance of this order and annually thereafter until the expiration of all *future patents, Xerox* shall submit for publication in the Official Gazette of the United States Patent Office a notice (1) identifying by number, title, date of issue and category of subject matter (to an extent acceptable to the Commission) all United States *patents* which it is empowered to

license together with all *foreign patents* based on the patent application from which each United States *patent* originates; (2) stating that *Xerox* shall grant licenses under (a) its *order patents* to make, have made, use and vend *office copier products* under the terms of this order, and (b) patents required to be licensed pursuant to the terms of Paragraph X of this order, if any; (3) stating that *Xerox* shall disclose *know-how* to a licensee of its United States *order patents* for use in connection with the manufacture of *office copier products* in the *United States* under the terms of this order; and (4) stating that a copy of this order and a list of *patents* licensed to *Xerox* which are subject to the provisions of Paragraph II and IV C(9) of this order, if any, are available from *Xerox* upon written request. Beginning 30 days following the date of issuance of this order, and until the expiration of all *Xerox future patents*, *Xerox* shall send a copy of this order and of the current edition of such notice to each person who inquires as to the availability of a license for *office copier products*, or to whom *Xerox* has offered such a license at any time after Jan. 1, 1970.

XVIII

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

XIX

It is further ordered, That *Xerox* shall file with the Commission reports, in writing, setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this order. Said reports shall be filed 60 days and 180 days after the date of issuance of this order, and yearly thereafter on the anniversary date of the order during the period in which *Xerox* has obligations under this order, and shall contain such information and documents as are requested by the Bureau of Competition or the Commission relating to compliance with this order.

Commissioner Nye not participating.

IN THE MATTER OF

RETAIL CREDIT COMPANY

Docket 8920. Order, July 29, 1975.

Affirmation of law judge's denial of respondent's motion for a stay of further proceedings and, in the alternative, for leave to supplement the record.

Appearances

For the Commission: *William M. Sexton.*

For the respondent: *J. Wallace Adair, Howrey, Simon, Baker & Murchison,* Wash., D.C. *Kent E. Most, Hansell, Post, Brandon & Dorsey,* Atlanta, Ga.

ORDER AFFIRMING DENIAL OF RESPONDENT'S MOTION TO STAY PROCEEDINGS, OR, IN THE ALTERNATIVE, FOR PERMISSION TO SUPPLEMENT THE RECORD WITH NEWLY DISCOVERED EVIDENCE

This matter is before us on respondent's application for review of the administrative law judge's order, dated June 11, 1975, denying respondent's motion to stay proceedings pending the outcome of its Freedom of Information Act ("FOIA") suit against the Commission in the United States District Court for the District of Columbia or, in the alternative, for leave to supplement the record with newly discovered evidence which might be obtained by reason of the lawsuit.

By order dated June 24, 1975, the administrative law judge certified his ruling for review by the Commission pursuant to Section 3.23(b) of the Commission's Rules of Practice, 16 C.F.R. §3.23(b).

Respondent's motion offers too speculative a ground to warrant staying further proceedings since it assumes that respondent will ultimately obtain the documents and that the documents will contain information necessary to a resolution of the issues in this case. *See Encyclopaedia Britannica, Inc.* Docket 8908, order of May 22, 1975 Denying Motion to Postpone Oral Argument.

The administrative law judge's denial of respondent's motion, in the alternative, for permission to supplement the record with newly discovered evidence obtained from the Commission by reason of its FOIA request is also affirmed. The denial was without prejudice to respondent's right to renew the motion "* * * if and when respondent is in a position to move admission of specific and identified documents it may obtain under the FOIA into this record while the administrative law judge has jurisdiction of this proceeding." Such motions should be granted, at the very least, only upon a showing that the newly discovered evidence is relevant. It would, accordingly, be premature to

decide whether any materials which might be obtained as a result of the FOIA ligitation should be included in the record.[1]

It is ordered, That the law judge's denial of respondent's motion for a stay of further proceedings and, in the alternative, for leave to supplement the record be, and it hereby is, affirmed.

IN THE MATTER OF

AMREP CORPORATION

Docket 9018. Order, July 29, 1975

Denial of (1) respondent's motion for a stay of proceedings insofar as it invokes the administrative discretion of the Commission; and (2) respondent's request for oral argument on this matter.

Appearances

For the Commission: *Perry W. Winston.*

For the respondent: *Theodore R. Schreier* and *David I. Parkoff*, New York City.

ORDER DENYING MOTION FOR A STAY

This matter is before us on the administrative law judge's certification, pursuant to Section 3.22 of the Rules of Practice, of respondent's motion for a stay of these proceedings insofar as it invokes the administrative discretion of the Commission. The law judge rejected respondent's argument that it was entitled to such a stay as a matter of law to avoid prejudice to the rights of certain of its officers who are the subjects of a grand jury investigation now being conducted by the United States Attorney for the Southern District of New York.

For the reasons stated in the law judge's order, we conclude that none of the arguments raised in respondent's motion warrant a discretionary stay of these proceedings.* We find nothing in this matter which would warrant an oral argument as requested by respondent. Accordingly,

It is ordered, That the aforesaid motion, as certified by the law judge's order of June 30, 1975, be, and it hereby is, denied.

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[1] We reject respondent's argument that the administrative law judge lacked authority to rule on its motion for a stay. Disposition of respondent's motion involved questions relating to the timing of the taking of evidence and the completion of the evidentiary record. The questions were, accordingly, addressed to the administrative law judge's fact-finding function. *Compare Philip Morris, Inc.*, 79 F.T.C. 1023 (1971).

* Respondent has also filed a reply to complaint counsel's answer to its motion. Although the reply is not specifically authorized by the Commission's Rules of Practice, the Commission has, in its discretion, considered the arguments raised therein in reaching its decision.

It is further ordered, That respondent's request for oral argument on this matter be, and it hereby is, denied.

IN THE MATTER OF

CREDIT DATA NORTHWEST, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

Docket C-2712. Complaint, July 29, 1975-Decision, July 29, 1975

Consent order requiring a Seattle, Wash., credit reporting agency and three affiliated agencies located in Washington and Canada, among other things to cease collecting, assembling, furnishing or utilizing consumer reports in violation of the Fair Credit Reporting Act.

Appearances

For the Commission: *Dennis D. McFeely* and *Sarah J. Hughes*.
For the respondents: *Short, Cressman & Cable*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Credit Data Northwest, a partnership doing business as Seattle Credit Bureau; Olympia Credit Bureau, Inc., Credit Bureau of Spokane, Inc., and Retail Credit Grantors Bureau, Ltd., corporations, individually and as partners in Credit Data Northwest; Terry B. Smith, individually and as general manager of Credit Data Northwest; and Allen F. Leiter, individually and as credit reporting manager of Credit Data Northwest; hereinafter sometimes referred to as respondents, have violated the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. For the purposes of this complaint and the accompanying order to cease and desist, "consumer report" and "consumer reporting agency" are defined as set forth in Sections 603(d) and (f) of the Fair Credit Reporting Act, respectively. Furthermore, "member" is defined as persons, partnerships, corporations or other entities which have contracted with respondents to receive consumer reports upon request in return for monetary dues, report fees and the obligation to report consumer credit information to respondents.

"Nonmember" is defined as persons, partnerships, corporations or other entities which apply and pay for consumer reports on a single report basis without previous contractual arrangements and for a higher fee than members.

PAR. 2. Credit Data Northwest is a partnership existing and doing business under and by virtue of the laws of the State of Washington, under the assumed name Seattle Credit Bureau, with its office and principal place of business located at 1601 Second Ave., Seattle, Wash. Said respondent is a "consumer reporting agency" and is the sole successor and assign of Seattle Credit Bureau, Inc., a dissolved Washington corporation, and as such is liable for the acts and practices which were engaged in by Seattle Credit Bureau, Inc. Reference hereinafter to acts or omissions of "respondents" shall be deemed to include reference to acts or omissions of the former Seattle Credit Bureau, Inc. Credit Data Northwest is also liable for its own acts and practices as hereinafter alleged.

Olympia Credit Bureau, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 203 E. Fifth St., Olympia, Wash. Said respondent is a partner in Credit Data Northwest and is a "consumer reporting agency."

Credit Bureau of Spokane, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at W. 521 Maxwell St., Spokane, Wash. Said respondent is a partner in Credit Data Northwest and is a "consumer reporting agency."

Retail Credit Grantors Bureau, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 400 Robson St., Vancouver, British Columbia, Canada. Said respondent is a partner in Credit Data Northwest and is a "consumer reporting agency," doing business in the United States of America.

Terry B. Smith is the general manager of Credit Data Northwest, former president of Seattle Credit Bureau, Inc., and president of Olympia Credit Bureau, Inc. His address is 1601 Second Ave., Seattle, Wash.

Allen F. Leiter is credit reporting manager of Credit Data Northwest and a former officer of Seattle Credit Bureau, Inc. His address is 1601 Second Ave., Seattle, Wash.

Terry B. Smith and Allen F. Leiter formulated, directed and controlled the acts and practices of the former Seattle Credit Bureau, Inc. when it was operating as a consumer reporting agency, and now

formulate, direct and control the acts and practices of Credit Data Northwest in its operations as a consumer reporting agency.

PAR. 3. All the acts and practices alleged hereafter occurred subsequent to Apr. 25, 1971, the effective date of the Fair Credit Reporting Act, in the ordinary course of respondents' business. Allegations of respondents' present acts or practices include past acts or practices.

PAR. 4. Respondents fail to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed in Section 604 of the Fair Credit Reporting Act. Typical and illustrative, but not all inclusive, of the manner in which respondents fail to maintain such reasonable procedures are the following:

A. Respondents fail in certain instances to make reasonable efforts to verify the identity of new member and nonmember consumer report applicants.

B. Respondents fail in a substantial number of instances to require nonmember consumer report applicants to certify the purpose for which the consumer report is sought and that it will be used for no other purpose.

C. Respondents give in a substantial number of instances consumer reports to applicants who have stated purposes for which the reports were sought other than those purposes listed in Section 604 of the Fair Credit Reporting Act.

D. Respondents fail to specifically inquire of prospective members concerning the particular purposes for which information will be used, to set out such purposes in writing, and to require that prospective members certify to such purposes and certify that the information will be used for no other purposes as required by Section 607(a) of the Fair Credit Reporting Act.

E. Respondents fail to require members, such as private clubs, attorneys, private investigators and such other classes of members who respondents have substantial cause to believe have reason to obtain consumer reports for impermissible purposes under the Fair Credit Reporting Act, to certify the purposes for which the consumer reports are sought at the time of their request for such reports and that the information will be used for no other purpose.

F. Respondents fail to make reasonable efforts to verify the uses certified by member and nonmember consumer report users.

Therefore, respondents are in violation of Sections 604 and 607(a) of the Fair Credit Reporting Act.

PAR. 5. Respondents fail to maintain reasonable procedures designed to avoid the inclusion in consumer reports of adverse items of information which antedate the report by more than the applicable

period specified in Section 605 of the Fair Credit Reporting Act, including, but not limited to, the failure to omit from consumer reports information concerning the delinquency of accounts when such delinquencies occurred more than seven years prior to the giving of the consumer report.

Therefore, respondents are in violation of Section 607(a) of the Fair Credit Reporting Act.

PAR. 6. Respondents fail to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individuals to whom the consumer reports relate. Illustrative of the manner in which respondents fail to follow such reasonable procedures is the failure to distinguish between persons with identical or similar names with the result that consumer reports contain information on the wrong individual.

Therefore, respondents are in violation of Section 607(b) of the Fair Credit Reporting Act.

PAR. 7. When the completeness or accuracy of an item of information in his or her file is disputed by a consumer, respondents fail in certain instances to:

A. Reinvestigate within a reasonable time;

B. Reinvestigate with the original creditor when an account placed for collection is disputed;

C. Record, after reinvestigation, the current status of information disputed by the consumer;

D. Promptly delete information which is found to be inaccurate or not verifiable after reinvestigation; and

E. Inform the consumer of results of reinvestigations adverse to the position of the consumer.

Therefore, respondents are in violation of Section 611(a) of the Fair Credit Reporting Act.

PAR. 8. Respondents fail in certain instances to:

A. Clearly and conspicuously disclose to the consumer his or her right to request that notification of deletions of information, and/or consumer statement, codification, or summary thereof with respect to disputed information, be sent by respondents to persons designated by the consumer and who have received the deleted or disputed information within the previous two years for employment purposes or within the previous six months for any other purpose;

B. Furnish notification of deletions of information and the consumer statement, codification or summary thereof to any persons specifically designated by the consumer and qualified under Section 611(d) of the Fair Credit Reporting Act to receive such information.

Therefore, respondents are in violation of Section 611(d) of the Fair Credit Reporting Act.

PAR. 9. When a dispute cannot be resolved and the consumer submits a brief statement of his or her version of the nature of the dispute, respondents fail in certain instances to clearly note in subsequent consumer reports containing the information in question that it is disputed by the consumer and provide either the consumer statement or a clear and accurate codification or summary thereof.

Therefore, respondents are in violation of Section 611(c) of the Fair Credit Reporting Act.

PAR. 10. The acts and practices and omissions set forth in Paragraphs Four through Nine are in violation of the Fair Credit Reporting Act and, pursuant to Section 621(a) of that Act, respondents have thereby violated Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Credit Data Northwest is a partnership existing and doing business in the State of Washington under the name Seattle Credit Bureau, with its office and principal place of business located at 1601 Second Ave., Seattle, Wash.

Respondent Olympia Credit Bureau, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Washington, with its office and principal place of business located at 203 E. Fifth St., Olympia, Wash. Olympia Credit Bureau, Inc. is a partner in Credit Data Northwest.

Respondent Credit Bureau of Spokane, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at W. 521 Maxwell St., Spokane, Wash. Credit Bureau of Spokane, Inc. is a partner in Credit Data Northwest.

Respondent Retail Credit Grantors Bureau, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 400 Robson St., Vancouver, British Columbia, Canada. Retail Credit Grantors Bureau, Ltd. is a partner in Credit Data Northwest.

Respondent Terry B. Smith is the general manager of Credit Data Northwest and president of Olympia Credit Bureau, Inc. His address is 1601 Second Ave., Seattle, Wash.

Respondent Allen F. Leiter is credit reporting manager of Credit Data Northwest. His address is 1601 Second Ave., Seattle, Wash.

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 Credit Data Northwest, a partnership; Olympia Credit Bureau, Inc., Credit Bureau of Spokane, Inc., and Retail Credit Grantors Bureau, Ltd., corporations, individually and as partners in Credit Data Northwest; and Terry B. Smith and Allen F. Leiter, individually, and as principal operating officials of Credit Data Northwest; and respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the collecting, assembling, evaluating or furnishing of consumer reports, as "consumer report" is defined in the Fair Credit Reporting Act (15 U.S.C. §1601, *et. seq.*), do forthwith cease and desist from:

1. Failing to make reasonable efforts to verify the identity of new members and nonmember consumer report applicants who are unknown to respondents by checking references, such as the yellow pages, a city directory, business reports, on-site inspection of the business premises or other methods adequate to reasonably ensure that such entities or persons are who they represent themselves to be.

2. Failing to require nonmember consumer report applicants at the time they apply for each consumer report to certify in writing the

purposes for which the consumer report is sought and that it will be used for no other purpose.

3. Furnishing consumer reports to members and nonmember applicants who have not, through the execution of a membership contract or an application for a single report, clearly stated a purpose for the report which is listed in Section 604 of the Fair Credit Reporting Act.

4. Failing to specifically inquire of prospective members concerning the particular purposes for which information will be used, to set out such purposes in the membership contract, and to require that prospective members certify to such purposes and certify that the information will be used for no other purposes as required by Section 607(a) of the Fair Credit Reporting Act.

5. Failing to require attorneys, private investigators and private clubs, and such other classes of members who respondents have substantial cause to believe have reason to obtain consumer reports for impermissible purposes, to certify orally or in writing at the time such members seek each consumer report, the purpose for which the information is sought, and that the information will be used for no other purpose, in accordance with Section 607(a) of the Fair Credit Reporting Act. The respondents shall require such members to agree in their membership contracts with respondents that if oral certification is given such members must provide written certification of the said purpose within 5 business days of such oral certification. If certification is made orally, the respondents shall make a written record of such oral certification at the time of the request.

6. Failing to make reasonable efforts to verify the uses certified by prospective members and to make reasonable efforts to reverify the purposes certified by members in the membership agreement every three (3) years.

7. Failing to make reasonable efforts to verify the uses certified by nonmember applicants for consumer reports. Such efforts shall include (a) when consumer reports are requested for purported credit transactions, inquiry shall be made to seek verification of such transactions through contacting the other party to the transaction or other knowledgeable parties; (b) in the case of a property owner purportedly seeking a consumer report on a prospective buyer or tenant, inquiry shall be made to seek verification of the applicant's ownership of the property in question and whether it is for sale or rent; (c) in the case of a party seeking a report for purported employment purposes, inquiring whether the consumer is employed by the party or has applied for employment and, if so, verifying whether the consumer is so employed or has applied for employment; and (d) when consumer

reports are requested in connection with business transactions having a personal, family or household purpose for the consumer, inquiry shall be made to seek verification of such transactions through contacting the other party to the transaction or other knowledgeable parties.

8. Failing, prior to the dissemination of any consumer report, to separate or delete adverse items of information in the consumer's file which antedate the date of the report by more than the applicable period specified in Section 605(a) of the Fair Credit Reporting Act.

9. Making any consumer report containing any item of information prohibited by Section 605(a) of the Fair Credit Reporting Act, except as provided in Section 605(b) of that Act, including the giving of any consumer report concerning the delinquency of an account more than seven years after such delinquency.

10. Recording information in a consumer's file, unless the source of the information provides at least one type of identification for the consumer in addition to the consumer's name, such as address, social security number, employer, or name of spouse.

11. Failing, when the completeness or accuracy of information in his or her file is disputed by a consumer, to:

a. (i) Initiate reinvestigation within three business days, (ii) continue to make reasonable efforts to complete the reinvestigation and (iii) to complete the reinvestigation within thirty days of the initiation thereof or, in the alternative, delete such information. Such reinvestigations with creditors shall include, but not necessarily be limited to, requesting examination by the creditor, where relevant, of any original documentation relating to the dispute in addition to credit records; such reinvestigations concerning suits and judgments shall include making inquiry of original creditors, where relevant and possible, and making inquiry in official records to determine if the judgment has been satisfied, the suit dismissed or other relevant action taken;

b. Reinvestigate with the original creditor when an account placed for collection is disputed;

c. Record immediately after reinvestigation the current status of information disputed by the consumer;

d. Immediately delete information which is found to be inaccurate or not verifiable after reinvestigation;

e. Inform the consumer, orally or in writing by mailing the information, of the results of the reinvestigation within five business days after the completion of the reinvestigation.

12. Failing to explicitly orally disclose to the consumer his or her right to request that all deletions, notations and consumer statements with respect to disputed information be sent by respondents to persons

designated by the consumer who have received the deleted or disputed information within two years for employment purposes or within six months for any other purpose. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

13. Failing to furnish notification of deletion of information and any consumer statement, codification or summary thereof to any person designated by the consumer and qualified under Section 611(d) of the Fair Credit Reporting Act to receive such information. Such notification shall take place within five business days after the deletion or receipt of the consumer's request that the statement, codification or summary be sent.

14. Failing, whenever a statement of dispute has been filed, unless there are reasonable grounds to believe that the statement of dispute is frivolous or irrelevant, to clearly note in any subsequent consumer report containing the information in question that it is disputed by the consumer, and to provide either the consumer's statement or a clear and accurate codification or summary thereof.

15. Failing to provide each consumer who requests disclosure of information in his or her file with an exact facsimile of Exhibit A attached hereto.

It is further ordered, That respondents shall, at all times subsequent to the effective date of this order, maintain complete business records relative to the manner and form of their compliance with this order during the immediately preceding two-year period. Such records shall include all correspondence with consumers and consumer report applicants, policy directives, completely filled out interview reports, complaints from consumers and consumer report applicants, and other pertinent documents. Such records shall be kept in chronological order separate from the consumer files and shall be made available for inspection and photocopying by any authorized representative of the Federal Trade Commission upon reasonable notice at respondents' place of business or other properly designated location.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all employees now or hereafter engaged in the collecting, assembling, evaluating or furnishing of consumer information to third parties and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty days prior to any proposed changes in the corporate respondents or in the partnership entity, such as dissolution, assignment or sale, resulting in the emergence of successor corporations or partnerships, creation or dissolution of subsidiaries, or any other

changes in the legal entities which may affect compliance obligations arising out of this order.

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

It is further ordered, That respondents 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.

EXHIBIT A

KNOW YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act became law on April 25, 1971. It was passed by Congress to protect consumers against the distribution of inaccurate or obsolete information and to ensure that consumer reporting agencies, such as Seattle Credit Bureau, exercise their responsibilities in a manner that is fair and equitable to consumers.

Under this law you can take steps to protect yourself if you have been denied credit, insurance, or employment, or if you believe you have had difficulties because of a consumer report on you.

THE FAIR CREDIT REPORTING ACT GIVES YOU THE RIGHT:

1. To be told the name and address of the consumer reporting agencies responsible for preparing a consumer report that was used to deny you credit, insurance, or employment or to increase the cost of credit or insurance.

2. To be told by a consumer reporting agency the nature, substance and names of sources of the information (except medical) collected about you.

3. To take anyone of your choice with you when you visit the consumer reporting agency to check your file.

4. To obtain all information to which you are entitled, free of charge, if you request a consumer interview within thirty days after you have been denied credit, insurance or employment. Otherwise, the reporting agency is permitted to charge a reasonable fee for giving you the information.

5. To be told the names of persons or businesses who have received a consumer report on you within the preceding six months, or within the preceding two years if the report was furnished for employment purposes.

6. To have incomplete or incorrect information reinvestigated, unless the request is frivolous, and, if the information is found to be inaccurate or cannot be verified, to have such information removed from your file.

7. To have the agency notify (at no cost to you) those you specify who have previously received the incorrect or incomplete information within two years if the report was for employment purposes or within six months for any other purpose, that this information has been deleted from your file.

8. When a dispute between you and the reporting agency about information in your file cannot be resolved, you have the right to have your version of such dispute placed in the file and included in future consumer reports.

9. To request the reporting agency to send your version of the dispute (for a reasonable fee) to those you name who received reports concerning the disputed information within the past six months (two years if received for employment purposes).

10. To request the consumer reporting agency to incorporate into your file all verifiable relevant credit information supplied by you, including good credit references.

11. To sue a reporting agency for damages if it willfully or negligently violates the law and, if you are successful, you can collect attorney fees and court costs.

12. In most instances not to have adverse information reported after seven years. One major exception is bankruptcy, which may be reported for fourteen years.

THE FAIR CREDIT REPORTING ACT DOES NOT:

1. Give you the right to request a report on yourself from the consumer reporting agency.

2. Give you the right when you visit the agency to receive a copy of or physically handle your file.

3. Compel anyone to do business with an individual consumer.

4. Apply when you request commercial (as distinguished from consumer) credit or business insurance.

5. Authorize any federal agency to intervene on behalf of an individual consumer.

For more detailed information on the Fair Credit Reporting Act or to report a violation of the Act, contact the Seattle Regional Office of the Federal Trade Commission.

IN THE MATTER OF

COMMERCE DRUG COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2713. Complaint, July 29, 1975–Decision, July 29, 1975

Consent order requiring a Farmingdale, N.Y., producer of vitamins and/or mineral products, and its parent corporation, among other things to cease disseminating unsubstantiated advertisements regarding the efficacy, benefit or need to prospective purchasers of the products.

Appearances

For the Commission: *Barry E. Barnes* and *Elizabeth A. Taylor.*
For the respondents: *Raymond D. McMurray*, Wash., D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Commerce Drug Company, Inc., Del Laboratories, Inc., and Levine, Huntley & Schmidt, Inc., corporations, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in

the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Commerce Drug Company, Inc., a subsidiary of Del Laboratories, Inc., is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

Del Laboratories, Inc. is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

PAR. 2. Levine, Huntley & Schmidt, Inc. is a New York corporation with its office and principal place of business located at Ten E. 53rd St., New York, N.Y.*

PAR. 3. Respondent Commerce Drug Company, Inc. has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a certain vitamin product named "Rev-up, Vitamins For Men," a "food" or "drug" or both, as those terms are defined in Section 15 of the Federal Trade Commission Act.

Each Rev-up capsule contains:

		*Upper Limit U.S.R.D.A.**
Vitamin B-1 (Thiamine Mononitrate)	*10.00 mgs.*	*2.25 mgs.*
Vitamin B-2 (Riboflavin)	*10.00 mgs.*	*2.60 mgs.*
Vitamin B-6 (Phridoxine Hydrochloride)	*25.00 mgs.*	*3.00 mgs.*
Vitamin B-12 (Cobalamin Conc.)	*10.00 mcgs.*	*9.00 mcgs.*
Niacinamide	*100.00 mgs.*	*30.00 mgs.*
Calcium Pantothenate	*20.00 mgs.*	*15.00 mgs.*
Folic Acid	*0.10 mgs.*	*0.40 mgs.*
Vitamin C (Ascorbic Acid)	*100.00 mgs.*	*90.00 mgs.*
Vitamin E (di-Alpha Tocopheryl Acetate) in a base containing Fructose	*100.00 I.U.*	*45.00 I.U.*

* United States Recommended Daily Allowance as established by the United States Food and Drug Administration.

PAR. 4. Respondent Del Laboratories, Inc. has been and is now engaged in the manufacturing of cosmetics, proprietary drugs and sundries. It dominates and controls or knew of and tacitly approved the acts and practices of Commerce Drug Company, Inc., as set forth herein.

PAR. 5. Respondent Levine, Huntley & Schmidt, Inc. has been and is now an advertising agency for Commerce Drug Company, Inc. and Del Laboratories, Inc. and has prepared and placed for publication, and caused the dissemination of, advertising material, including but not

* See p. 406 herein for decision as to Levine, Huntley & Schmidt, Inc., Docket C-2718.

limited to the advertising referred to herein, to promote the sale of Rev-up vitamins, a "food" or "drug" or both, as those terms are defined in Section 15 of the Federal Trade Commission Act.

PAR. 6. Respondents Commerce Drug Company, Inc. and Del Laboratories, Inc. have caused Rev-up vitamins, when sold, to be shipped and distributed from their place of business in New York to retail stores and other purchasers located in various other States of the United States.

PAR. 7. In the course and conduct of their business, respondents have disseminated or caused to be disseminated certain advertisements concerning Rev-up vitamins (1) by United States mails and by various means in commerce, including, but not limited to, insertion in newspapers of interstate dissemination and radio broadcasts of interstate transmission, for the purpose of inducing, or which were likely to induce, directly or indirectly, the purchase of Rev-up vitamins, or (2) by various means, for the purpose of inducing, or which were likely to induce, the purchase in commerce of Rev-up vitamins. Each of said respondents' volume of business in commerce is substantial.

PAR. 8. Typical of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following:

"THE AVERAGE MAN TAKES BETTER CARE OF HIS CAR THAN HE DOES OF HIS BODY." PETER REVSON, AUTO RACING CHAMPION

Nobody loves cars more than I do.

And nobody feels more strongly that a fine piece of machinery deserves a lot of pampering.

But I also feel a man owns another machine that's a lot more important: his body.

And because a man's body is something special, I'm recommending Rev-up vitamins. They're formulated specifically for active men. Taking into consideration the stresses and strains a man must face each day.

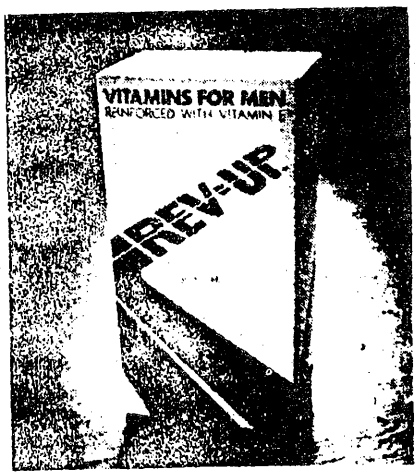
Each Rev-up capsule contains seven B-complex vitamins, in addition to vitamins C and E. Each capsule contains more than a normal daily requirement of every one of these vitamins.

Take Rev-up during the low energy period, from 3 p.m. to 6 p.m. for 30 days. Then, if you don't feel like a new man, mail the remaining Rev-up capsules to us and we'll fully refund your purchase price.

Rev-up is sold at drug counters. And girls, for your sake as well as your husband's, even if he doesn't get around to buying Rev-up, do it for him.

A man has only one body.

Unlike a car, he can't trade it in for a new one.



VITAMINS FOR MEN.

PAR. 9. Through the use of such advertisements and others not specifically set out herein, respondents have represented, directly or by implication, that:

A. The stresses and strains a man undergoes create a condition which will be benefited by consumption of a vitamin product like Rev-up vitamins.

B. Active men need a specially formulated vitamin product like Rev-up vitamins.

C. There is a low-energy period in men from 3 p.m. to 6 p.m. each day.

D. Rev-up vitamins will make one feel like a "new man."

PAR. 10. At the time the representations set forth in Paragraph Nine were made, respondents had no reasonable basis from which to conclude that such representations were true.

Therefore the advertisements and representations referred to in Paragraphs Eight and Nine were and are deceptive and unfair.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents Commerce Drug Company, Inc. and Del Laboratories, Inc. have been and are now in substantial competition in commerce with corporations, firms and individuals selling and distributing nonprescription vitamin products.

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

PAR. 13. The use by respondents of the aforesaid deceptive and unfair advertisements has had the tendency and capacity to mislead members of the public to rely thereon and to purchase substantial quantities of Rev-up vitamins.

PAR. 14. The aforesaid acts and practices of respondents were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act. [HD,5; Decision and Order]

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 the 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Commerce Drug Company, Inc., a subsidiary of Del Laboratories, Inc., is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

Respondent Del Laboratories, Inc. is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

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

ORDER

It is ordered, That respondents Commerce Drug Company, Inc. and Del Laboratories, Inc., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the product Rev-up vitamins or any vitamin and/or mineral product of Commerce Drug Company, Inc. or Del Laboratories, Inc. do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents in

writing, orally, visually or in any other manner, directly or by implication, that:

1. The stresses and strains a person undergoes create a condition which will be benefited by consumption of such product;

2. People need such a specially formulated product;

3. Such product is of special benefit to a person or particular group of persons;

4. There is a daily low-energy period in people at any particular time of day, or words of similar import or meaning;

5. Such product will make one feel like a new person, or words of similar import or meaning;

Unless, at the time the statement or representation is made, respondents have a reasonable basis for such representations consisting of competent and reliable evidence.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement containing any representation referred to in Paragraph A above which is not supported by the aforesaid reasonable basis.

It is further ordered, That respondents maintain complete business records relative to the manner and form of their compliance with this order, and shall retain each record for three years after such record is made.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their present and future operating divisions, officers, and directors, and to all present and future agents or representatives engaged in the preparation or placement of advertisements.

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

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

IN THE MATTER OF

LEVINE, HUNTLEY & SCHMIDT, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2718. Complaint, July 29, 1975–Decision, July 29, 1975

Consent order requiring a New York City advertising agency, in connection with the product Rev-up vitamins or any vitamin and/or mineral product of Commerce Drug Company, Inc. or Del Laboratories, Inc., among other things to cease disseminating unsubstantiated advertisements regarding the efficacy, benefit or need to prospective purchasers of the products.

Appearances

For the Commission: *Barry E. Barnes.*

For the respondents: *Stuart Lee Friedel*, Levine, Huntley & Schmidt, Inc., New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Commerce Drug Company, Inc., Del Laboratories, Inc., * and Levine, Huntley & Schmidt, Inc., corporations, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Commerce Drug Company, Inc., a subsidiary of Del Laboratories, Inc., is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

Del Laboratories, Inc. is a Delaware corporation with its office and principal place of business located at 565 Broad Hollow Rd., Farmingdale, N.Y.

PAR. 2. Levine, Huntley & Schmidt, Inc. is a New York corporation with its office and principal place of business located at Ten E. 53rd St., N.Y., N.Y.

PAR. 3. Respondent Commerce Drug Company, Inc. has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a certain vitamin product named "Rev-up, Vitamins For Men," a "food" or "drug" or both, as those terms are defined in Section 15 of the Federal Trade Commission Act.

* See p. 399 herein for decision as to these respondents, Docket C-2713.

Each Rev-up capsule contains:

		Upper Limit U.S.R.D.A.*
Vitamin B-1 (Thiamine Mononitrate)	10.00 mgs.	2.25 mgs.
Vitamin B-2 (Riboflavin)	10.00 mgs.	2.60 mgs.
Vitamin B-6 (Phridoxine Hydrochloride)	25.00 mgs.	3.00 mgs.
Vitamin B-12 (Cobalamin Conc.)	10.00 mgs.	9.00 mgs.
Niacinamide	100.00 mcgs.	30.00 mcgs.
Calcium Pantothenate	20.00 mgs.	15.00 mgs.
Folic Acid	0.10 mgs.	0.40 mgs.
Vitamin C (Ascorbic Acid)	100.00 mgs.	90.00 mgs.
Vitamin E (di-Alpha Tocopheryl Acetate) in a base containing Fructose	100.00 I.U.	45.00 I.U.

* United States Recommended Daily Allowance as established by the United States Food and Drug Administration.

PAR. 4. Respondent Del Laboratories, Inc. has been and is now engaged in the manufacturing of cosmetics, proprietary drugs and sundries. It dominates and controls or knew of and tacitly approved the acts and practices of Commerce Drug Company, Inc., as set forth herein.

PAR. 5. Respondent Levine, Huntley & Schmidt, Inc. has been and is now an advertising agency for Commerce Drug Company, Inc. and Del Laboratories, Inc. and has prepared and placed for publication, and caused the dissemination of, advertising material, including but not limited to the advertising referred to herein, to promote the sale of Rev-up vitamins, a "food" or "drug" or both, as those terms are defined in Section 15 of the Federal Trade Commission Act.

PAR. 6. Respondents Commerce Drug Company, Inc. and Del Laboratories, Inc. have caused Rev-up vitamins, when sold, to be shipped and distributed from their place of business in New York to retail stores and other purchasers located in various other States of the United States.

PAR. 7. In the course and conduct of their business, respondents have disseminated or caused to be disseminated certain advertisements concerning Rev-up vitamins (1) by United States mails and by various means in commerce, including, but not limited to, insertion in newspapers of interstate dissemination and radio broadcasts of interstate transmission, for the purpose of inducing, or which were likely to induce, directly or indirectly, the purchase of Rev-up vitamins, or (2) by various means, for the purpose of inducing, or which were likely to induce, the purchase in commerce of Rev-up vitamins. Each of said respondents' volume of business in commerce is substantial.

PAR. 8. Typical of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following [see p. 402, herein]:

PAR. 9. Through the use of such advertisements and others not specifically set out herein, respondents have represented, directly or by implication, that:

A. The stresses and strains a man undergoes create a condition which will be benefited by consumption of a vitamin product like Rev-up vitamins.

B. Active men need a specially formulated vitamin product like Rev-up vitamins.

C. There is a low-energy period in men from 3 p.m. to 6 p.m. each day.

D. Rev-up vitamins will make one feel like a "new man."

PAR. 10. At the time the representations set forth in Paragraph Nine were made, respondents had no reasonable basis from which to conclude that such representations were true.

Therefore the advertisements and representations referred to in Paragraphs Eight and Nine were and are deceptive and unfair.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents Commerce Drug Company, Inc. and Del Laboratories, Inc. have been and are now in substantial competition in commerce with corporations, firms and individuals selling and distributing nonprescription vitamin products.

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

PAR. 13. The use by respondents of the aforesaid deceptive and unfair advertisements has had the tendency and capacity to mislead members of the public to rely thereon and to purchase substantial quantities of Rev-up vitamins.

PAR. 14. The aforesaid acts and practices of respondents were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

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

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

A. Respondent Levine, Huntley & Schmidt, Inc. is a New York corporation with its office and principal place of business located at Ten E. 53rd St., N.Y., N.Y.

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

ORDER

It is ordered, That respondent Levine, Huntley & Schmidt, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the product Rev-up vitamins or any vitamin and/or mineral product of Commerce Drug Company, Inc. or Del Laboratories, Inc. do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents in writing, orally, visually or in any other manner, directly or by implication, that:

1. The stresses and strains a person undergoes create a condition which will be benefited by consumption of such product;

2. People need such a specially formulated product;

3. Such product is of special benefit to a person or particular group of persons;

4. There is a daily low-energy period in people at any particular time of day, or words of similar import or meaning;

5. Such product will make one feel like a new person, or words of similar import or meaning;

Unless, at the time the statement or representation is made, respondent has a reasonable basis for such representations consisting of competent and reliable evidence.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement containing any representation referred to in Paragraph A above which is not supported by the aforesaid reasonable basis.

It is further ordered, That respondent maintain complete business records relative to the manner and form of their compliance with this order, and shall retain each record for three years after such record is made.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its present and future operating divisions, officers, and directors, and to all present and future agents or representatives engaged in the preparation or placement of advertisements.

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

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