

IN THE MATTER OF

JOHN HANCOCK MUTUAL LIFE INSURANCE CO., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2930. Complaint, Sept. 19, 1978 — Decision, Sept. 19, 1978

These four (4) consent orders, among other things, require four (4) Boston, Massachusetts insurance companies to cease interlocking directors by allowing any individual to sit on their boards who is simultaneously sitting on the board of any of the other boards or of any other competitive firms. The consent orders additionally require the companies to initiate prescribed procedures designed to eliminate interlocking directorates, and to submit detailed compliance reports to the Commission annually for a five-year period.

Appearances

For the Commission: *Patrick J. Quinlan* and *Alan Proctor*.

For the respondents: *Andrew C. Hartzell, Jr.* for John Hancock Mutual Life Insurance Co., *John S. Kingdon* for New England Mutual Life Insurance Co. and *Edwin M. Zimmerman* for State Mutual Life Assurance Co. and Liberty Mutual Insurance Co., Boston, Mass.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondents have violated Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof, would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. The following definitions apply in this complaint:

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(c) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(d) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of

"The America Group," including American Variable Annuity Life Assurance Company, The Hanover Insurance Company, Worcester Mutual Insurance Company, and The Beacon Mutual Indemnity Company, and all of their insurance company subsidiaries.

(e) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(f) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(g) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(h) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(i) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

PAR. 2. Respondent John Hancock Mutual Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at John Hancock Place, Boston, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 3. Respondent Liberty Mutual Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 175 Berkeley St., Boston, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 4. Respondent New England Mutual Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 501 Boylston St., Boston, Massachu-

setts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 5. Respondent State Mutual Life Assurance Company of America is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 440 Lincoln St., Worcester, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 6. Roger C. Damon is a member of the boards of directors of Liberty Mutual Insurance Company and New England Mutual Life Insurance Company. He is also a member of the Finance Committee of New England Mutual Life Insurance Company.

PAR. 7. Thomas J. Galligan, Jr., is a member of the boards of directors of Liberty Mutual Insurance Company and New England Mutual Life Insurance Company. He is also a member of the Finance Committee of New England Mutual Life Insurance Company.

PAR. 8. Richard D. Hill is a member of the boards of directors of Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company.

PAR. 9. D. Thomas Trigg is a member of the boards of directors of Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America.

PAR. 10. John Hancock conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Group Accident and Health	407,519,427
Ordinary Life	586,604,681
Group Life	212,735,047
Individual Annuities	5,619,142

PAR. 11. Liberty Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

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Lines of Business	Annual Premiums Written During 1975
Fire	6,482,256
Allied Lines	4,561,932
Homeowner's Multiple Peril	56,062,660
Commercial Multiple Peril	21,324,904
Inland Marine	12,081,305
Group Accident and Health	98,410,880
Other Accident and Health	2,924,900
Workmen's Compensation	413,965,016
Other Liability	112,867,361
Auto Liability	271,919,902
Auto Physical Damage	124,330,409
Fidelity	2,157,232
Burglary/Theft	2,025,214
Ordinary Life	5,766,025
Group Life	8,811,364
Individual Annuities	66,331

PAR. 12. New England Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Group Accident and Health	56,167,752
Ordinary Life	318,329,892
Group Life	21,133,487
Individual Annuities	22,791,633

PAR. 13. State Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975 its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Fire	24,765,253
Allied Lines	10,683,161

Homeowner's Multiple Peril	34,434,834
Commercial Multiple Peril	23,957,896
Inland Marine	6,497,439
Group Accident and Health	50,636,102
Other Accident and Health	4,086,048
Workmen's Compensation	31,998,014
Other Liability	108,356,934
Auto Liability	55,692,894
Auto Physical Damage	41,380,235
Ocean Marine	6,004,993
Aircraft	9,767,027
Surety	2,329,641
Ordinary Life	103,594,266
Group Life	18,621,943
Individual Annuities	1,198,888

PAR. 14. (a) By the nature of their business and the locations of their operations as hereinabove described, Liberty Mutual and New England Mutual are competitors of each other in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: group accident and health, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between Liberty Mutual and New England Mutual would constitute a violation of the antitrust laws.

PAR. 15. (a) By the nature of their business and the locations of their operations as hereinabove described, John Hancock and Liberty Mutual are competitors in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: group accident and health, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between John Hancock and Liberty Mutual would constitute a violation of the antitrust laws.

PAR. 16. (a) By the nature of their business and the locations of their operations as hereinabove described, State Mutual and Liberty Mutual are competitors of each other in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: fire, allied lines, homeowner's multiple peril, commercial multiple peril, inland marine, group accident and health, other accident and health, workmen's compensation, other

liability, auto liability, auto physical damage, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between State Mutual and Liberty Mutual would constitute a violation of the antitrust laws.

PAR. 17. (a) John Hancock, Liberty Mutual, New England Mutual and State Mutual conduct their business, as hereinabove described, in the District of Columbia and in various States of the United States.

(b) John Hancock, Liberty Mutual, New England Mutual and State Mutual engage in "commerce" and conduct their business, including activities involving their boards of directors, so as to have an effect upon "commerce," as the term "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44 and in Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 18. Roger C. Damon's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and New England Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company.

PAR. 19. Thomas J. Galligan, Jr.'s simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and New England Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company.

PAR. 20. Richard D. Hill's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual

Insurance Company and John Hancock Mutual Life Insurance Company.

PAR. 21. D. Thomas Trigg's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America is a violation by Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America.

DECISION AND ORDER RE RESPONDENT JOHN HANCOCK
MUTUAL LIFE INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) 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 respondent for the purpose of this proceeding only of 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 set forth in said agreement; 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, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at John Hancock Place, Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the

subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

I

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

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with John Hancock, or that all legally available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within John Hancock, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by John Hancock for which, during the immediately preceding calendar year, annual premiums received by John Hancock exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph

III(b) hereof discloses the existence of competition in any line of insurance between John Hancock and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the Respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered. That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of John Hancock above or is John Hancock's (1) parent, (2) sister, or (3) subsidiary.

DECISION AND ORDER RE RESPONDENT LIBERTY MUTUAL INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) 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 respondent for the purpose of this proceeding only of 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 set forth in said agreement; 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, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 175 Berkeley St., Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

I

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

(a) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an

insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of John Hancock Mutual Life Insurance Company or New England Mutual Life Insurance Company or State Mutual Life Assurance Company of America so long as respondent and any of the said companies of which said individual is or would at the same time be a director or nominee for director are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of John Hancock Mutual Life Insurance Company or New England Mutual Life Insurance Company or State Mutual Life Assurance Company of America. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with Liberty Mutual, or that all legally

available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within Liberty Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by Liberty Mutual for which, during the immediately preceding calendar year, annual premiums received by Liberty Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between Liberty Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal

within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of Liberty Mutual above or is Liberty Mutual's (1) parent, (2) sister, or (3) subsidiary.

DECISION AND ORDER RE RESPONDENT NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) 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 respondent for the purpose of this proceeding only of 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 set forth in said agreement; 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, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 501 Boylston St., Boston, Massachusetts.

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

ORDER

I

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

(a) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such

individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with New England Mutual, or that all legally available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine, by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within New England Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition

with any line of insurance underwritten by New England Mutual for which, during the immediately preceding calendar year, annual premiums received by New England Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between New England Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of New England Mutual above or is New England Mutual's (1) parent, (2) sister, or (3) subsidiary.

DECISION AND ORDER RE RESPONDENT STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA

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

present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) 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 respondent for the purpose of this proceeding only of 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 set forth in said agreement; 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, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 440 Lincoln St., Worcester, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

I

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

(a) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of "The American Group," including American Variable Annuity Life Assurance Company, The Hanover Insurance Company, Worcester Mutual Insurance Company, and The Beacon Mutual Indemnity Company, and all of their insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled

by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with State Mutual, or that all legally available

steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within State Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by State Mutual for which, during the immediately preceding calendar year, annual premiums received by State Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between State Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the Respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal

INTERLOCUTORY ORDER

within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of State Mutual above or is State Mutual's (1) parent, (2) sister, or (3) subsidiary.

INTERLOCUTORY ORDER

92 F.T.C.

IN THE MATTER OF

CENTURY 21 COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Sept. 21, 1978

ORDER DENYING AS MOOT RESPONDENTS' MOTIONS TO
COMPEL PRODUCTION OF DOCUMENTS SUBMITTED TO THE
COMMISSION ON PROPOSED INJUNCTION AND FOR DISCOVERY OF
ALL MEMORANDA, DOCUMENTS, COMMUNICATIONS OR
CONTACTS WITH THE COMMISSION REGARDING PROPOSED
INJUNCTION

Administrative Law Judge Lewis F. Parker has certified to the Commission respondents' motions to compel production of documents submitted to the Commission on an injunction proposed by complaint counsel, and for discovery of all memoranda, documents, communications or contacts with the Commission regarding the proposed injunction. The administrative law judge has recommended that all *ex parte* communications regarding the merits of this case which staff may have made to the Commission with respect to the proposed injunction be released.

The matter is moot. By minute of July 31, 1978, the Commission directed that all such *ex parte* communications from the staff, which contain statements of fact and mixed statements of fact and law which appear to relate to facts in issue, be placed on the public record. By reason of a clerical oversight, this was not done; however, the Commission has been informed that the pertinent materials have since been placed on the public record, pursuant to its July 31, 1978 directive. This procedure fully conforms to Rules of Practice Section 4.7(f), which governs communications, like these, that are *not* prohibited by Section 4.7(b). Accordingly, inasmuch as the Commission is unaware of any further *ex parte* communications on this subject, either written or oral,

It is ordered, That respondents' motions be, and hereby are, denied as moot.

IN THE MATTER OF
INTERCO INCORPORATED, ET AL.

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

Docket C-2929. Complaint, Sept. 26, 1978 — Decision, Sept. 26, 1978

This consent order, among other things, requires a St. Louis, Mo. distributor of footwear, wearing apparel and accessories and its subsidiaries to cease suggesting resale prices for their products; maintaining price fixing agreements; compelling price adherence and exclusive dealings through coercion, and penalizing recalcitrant dealers. The firms are also required to reinstate terminated resellers; and maintain relevant records for a five-year period.

Appearances

For the Commission: *Elliot Feinberg, Richard Gately, Judith K. Braun, Paul Eyre and Carole I. Danielson.*

For the respondents: *Ronald L. Aylward, Ephraim Jacobs and E.C. Heininger, St. Louis, Mo.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Interco Incorporated, Londontown Corporation, and Queen Casuals, Inc., corporations, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5(a)(1) of the Federal Trade Commission Act, and Sections 2(d), 2(e) and 3 of the Clayton Act, and that a proceeding by it in respect thereof is in the public interest, issues this complaint stating its charges as follows:

RESPONDENTS

PARAGRAPH 1. Respondent Interco Incorporated is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its executive offices located at Ten Broadway, St. Louis, Missouri.

Respondent Londontown Corporation is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at Londontown Boulevard, Eldersburg, Maryland.

Respondent Queen Casuals, Inc. is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at 10175 Northeast Ave., Philadelphia, Pennsylvania.

PAR. 2. Interco Incorporated is engaged, directly or through its

subsidiaries, in the manufacture, sale, and distribution of various consumer products. Among said products are footwear and wearing apparel bearing trademarks, brands, and names owned by Interco Incorporated, including, but not limited to, "Florsheim" and "Thayer McNeil" footwear, and "London Fog," "Clipper Mist," "Queen Casuals," "Devon" and "College-Town" wearing apparel.

Florsheim Shoe Company and International Shoe Company are operated as divisions of Interco Incorporated. By and through these divisions Interco Incorporated manufactures, distributes, and sells men's, women's and children's footwear.

Interco Incorporated is a substantial nationwide seller of medium-to-high priced dress and casual leather footwear in the United States. Interco Incorporated distributes its footwear products through numerous company-owned outlets as well as through independent retailers.

College-Town and Devon are operated as divisions of Interco Incorporated. By and through these divisions Interco Incorporated manufactures, distributes, and sells wearing apparel.

Londontown Corporation and Queen Casuals, Inc. are wholly-owned subsidiaries of Interco Incorporated. By and through these subsidiaries Interco Incorporated manufactures, distributes, and sells wearing apparel.

In 1976, Interco Incorporated had net sales in excess of \$1,000,000,000. Sales of footwear and apparel constituted more than 78 percent of earnings in 1976.

COMMERCE

PAR. 3. Respondents are engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and are engaged in or their business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

DEFINITIONS

PAR. 4. For the purpose of this complaint, the following definitions shall apply:

(a) "*Dealer*" — any person, partnership, firm, or corporation which engages in the retail sale of footwear and wearing apparel, except a company-owned store.

(b) "*Company-owned store*" — any retail outlet or lease department owned or operated by any of the respondents.

(c) "*Sale period*" — any time during which company-owned stores offer to sell products at prices lower than those in effect during the

usual and ordinary course of business; or, any suggested, authorized, or customary time for selling or advertising footwear or apparel at prices lower than suggested, established, or customary resale prices.

COMPETITION

PAR. 5. Except to the extent that competition has been restrained by reasons of the practices hereinafter alleged, respondents are in competition with other persons, partnerships, or corporations engaged in the manufacturing, offering for sale, sale, or distribution of various products, including but not limited to footwear and wearing apparel.

COUNT I

PAR. 6. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 7. Respondents are engaged and have engaged in the following acts or practices, some of which individually constitute unlawful acts or practices:

(a) Entering into combinations, agreements, or understandings with dealers or prospective dealers to adhere to certain resale prices.

(b) Disseminating price lists and supplements thereto containing suggested resale prices or resale prices in effect at company-owned stores, or otherwise informing dealers of suggested, established, or customary resale prices.

(c) Informing dealers or prospective dealers, by direct or indirect means, that respondents expect or desire such dealers to adhere to certain resale prices.

(d) Entering into combinations, agreements, or understandings with dealers or prospective dealers to adhere to certain sale periods.

(e) Disseminating information regarding sale periods, including the dates of such periods.

(f) Informing dealers or prospective dealers, by direct or indirect means, that respondents expect or desire such dealers to adhere to sale periods.

(g) Withholding allowances or other benefits from dealers who promote respondents' products at prices deviating from suggested, established, or customary resale prices or from prices in effect at company-owned stores.

(h) Identifying dealers who:

(1) Offer for sale or sell respondents' products at prices or terms deviating from established, suggested, or customary resale prices or from prices or terms in effect at company-owned stores; or

(2) Advertise respondents' products at prices or terms deviating from established, suggested or customary resale prices or from prices or terms in effect at company-owned stores; or

(3) Advertise closeout, promotional, clearance or irregular products as having been manufactured by respondents.

(i) Contacting dealers who engage in any of the activities referred to in (h)(1) through (3).

(j) Urging, inducing, persuading, compelling, or coercing dealers to cease engaging in any of the activities referred to in (h)(1) through (3).

(k) Threatening to terminate or terminating certain dealers who engage in any of the activities referred to in (h)(1) through (3).

(l) Granting rebates, credits, benefits, or allowances to dealers who sell respondents' products at suggested, established, or customary resale prices.

(m) Disseminating or assisting in the dissemination of resale price information between or among competing dealers.

(n) Refusing to sell to any existing dealer who will not adhere to certain resale prices or sale periods.

PAR. 8. The capacity, tendency, or effect of the acts and practices of respondents alleged in Count I is, or may be, to:

(a) Maintain, control or establish the prices at which respondents' products are sold; or

(b) Lessen, eliminate, frustrate, reduce, or hinder competition in the sale and distribution of respondents' products; or

(c) Deprive consumers of the benefits of free and open competition.

Therefore, the acts and practices alleged in Count I constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 9. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 10. Interco Incorporated has sold or contracted for the sale of footwear products to certain dealers on the condition, agreement, or understanding that such dealers shall not purchase the products of one or more competitors of Interco Incorporated.

PAR. 11. Interco Incorporated suggests, recommends, advises, persuades, or induces dealers to refrain from selling the footwear products of one or more competitors of Interco Incorporated.

PAR. 12. The capacity, tendency, and effect of the acts and practices of Interco Incorporated alleged in Count II is, or may be, to:

(a) Substantially lessen, hinder, restrain, or suppress competition

in the sale of medium-to-high priced dress or casual leather footwear; or

(b) Exclude or tend to exclude, competitors of Interco Incorporated from selling footwear to a substantial number of dealers.

PAR. 13. Therefore, the acts and practices alleged in Count II violate Section 3 of the Clayton Act and constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

PAR. 14. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 15. Interco Incorporated has paid or contracted for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, sale, or offering for sale of its products and Interco Incorporated has not made such payments available on proportionally equal terms to all customers competing with the customers so favored in the sale and distribution of its footwear products.

For example, Interco Incorporated is now granting and has granted advertising allowances to some of its dealers in connection with the opening of additional retail outlets or special promotional activities such as anniversary sales. Said allowances are not and were not made available on proportionally equal terms to all other dealers competing with the dealers so favored in the sale and distribution of its footwear products.

PAR. 16. Interco Incorporated has discriminated in favor of some of its purchasers against other competing purchasers of its products bought for resale by contracting to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the processing, handling, sale, or offering for sale of such products so purchased upon terms or conditions not accorded to all competing footwear purchasers on proportionally equal terms.

For example, Interco Incorporated has provided to some dealers the opportunity to purchase closeout merchandise or to return unsold product inventory.

PAR. 17. Therefore, the acts and practices alleged in Count III violate Sections 2(d) and 2(e) of the Clayton Act and constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Interco Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at Ten Broadway, St. Louis, Missouri.

Respondent Londontown Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Londontown Boulevard, Eldersburg, Maryland.

Respondent Queen Casuals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 10175 Northeast Ave., Philadelphia, Pennsylvania.

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

ORDER

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

"Reseller" is defined as any person, partnership, firm or corporation which purchases any product from any respondent or any person, partnership, firm or corporation owned or operated by any respondent. "Reseller" shall not include any retail outlet or lease department owned or operated by any respondent.

"Prospective reseller" is defined as any person, partnership, firm or corporation which seeks to purchase any product from a respondent or any person, partnership, firm or corporation owned or operated by any respondent. "Prospective reseller" shall not include any retail outlet or lease department owned or operated by any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price as well as the retail price in effect at any retail outlet or lease department owned or operated by any respondent.

"Sale period" is defined as any time during which any retail outlet or lease department owned or operated by any respondent offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than suggested, established or customary resale prices.

"Product" is defined as any footwear, apparel, or apparel accessories including but not limited to handbags, belts, gloves, scarves, hats and jewelry.

I

It is ordered, That respondents Interco Incorporated, Londontown Corporation and Queen Casuals, Inc., corporations, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale, distribution or advertising of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Establishing, exacting assurances to comply with, continuing or enforcing any combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce, directly or

indirectly, any resale price at which any product is to be sold or advertised by any reseller or prospective reseller.

2. Requiring or coercing any reseller or prospective reseller to establish, maintain, issue, adopt or adhere to any resale price or sale period.

3. For a period of three (3) years from the date of service of this order, orally suggesting or recommending any resale price or sale period to any reseller or prospective reseller. The advertising to consumers of actual resale prices by any retail outlet or lease department owned or operated by any respondent shall not be deemed a violation of this paragraph.

4. For a period of three (3) years from the date of service of this order, communicating in writing any resale price or sale period to any reseller or prospective reseller. The advertising to consumers of actual resale prices by any retail outlet or lease department owned or operated by any respondent shall not be deemed a violation of this paragraph. After this three (3) year period, it shall be clearly stated on the pages of any list, book, advertising, promotional material or other document where any suggested resale price or sale period appears:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

5. Requiring or soliciting, directly or indirectly, any reseller, prospective reseller, person or firm to report the identity of any reseller who deviates from any resale price or sale period.

6. Communicating with any reseller or prospective reseller concerning its deviation or alleged deviation from any resale price or sale period.

7. Suggesting or requiring that any reseller or prospective reseller refrain from or discontinue advertising any product at a certain resale price.

8. Representing that any action may or will be taken against any reseller if it deviates from any resale price or sale period.

9. Threatening to withhold or withholding advertising allowances or any other assistance, payment, service or consideration from any reseller, or limiting or restricting the eligibility of any reseller to receive such benefits because said reseller advertises or sells at a certain resale price.

10. Making any payment or granting any other consideration or benefit to a reseller because another reseller has sold at a certain resale price.

11. Hindering or precluding the lawful use by a reseller of any brand name of any respondent in conjunction with the sale or advertising of any product at any price.

12. Terminating, suspending, delaying shipments to or taking or threatening any action against any reseller because the reseller has, or was alleged to have, sold or advertised any product at a certain resale price, or because the reseller may engage in any such activity in the future. Provided that each of the respondents retains the right to terminate any reseller for lawful business reasons not inconsistent with this paragraph or any other paragraph of this order.

13. Attempting to secure any promise or assurance from any reseller or prospective reseller regarding the price at which such reseller or prospective reseller will or may advertise or sell any product; or requesting or requiring any reseller or prospective reseller to obtain approval from any respondent for any price at which such reseller or prospective reseller may or will advertise or sell any product.

II

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device in connection with the manufacture, offering for sale, sale, distribution or advertising of any footwear product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and the Clayton Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving or enforcing by refusal to sell, termination or threat thereof or otherwise, any agreement, understanding or arrangement which precludes or prevents a reseller or prospective reseller from stocking or selling a footwear product supplied by anyone other than a respondent or from independently determining the volume of a footwear product to be purchased from such other suppliers.

2. Requiring, coercing or inducing any reseller to cancel orders for or not purchase any footwear product supplied by anyone other than a respondent.

3. Making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through

such customer in connection with the handling, sale or offering for sale of footwear products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the sale or distribution of such products.

4. Discriminating in favor of any purchaser against any other competing purchaser or purchasers of any footwear product bought for resale by contracting to furnish or furnishing or by contributing to the furnishing of any services or facilities connected with the handling, sale or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

It is further ordered, That nothing in Part II of this order shall be construed to prevent any respondent from asserting all rights and defenses legally available to a respondent under Section 2 of the amended Clayton Act.

It is further ordered, That in any enforcement action brought to enforce the provisions of Part II of this order, respondents shall assume the burden of proving all such defenses.

III

It is further ordered, That respondents shall:

1. Within sixty (60) days after the date of service of this order, mail under separate cover a copy of either this order or the Federal Trade Commission's news release in this matter to every present reseller of the Florsheim, Devon or College-Town divisions of Interco Incorporated or of the Londontown Corporation or Queen Casuals, Inc. subsidiaries of Interco Incorporated. An affidavit of mailing shall be sworn to by an official of respondents verifying that said mailing was completed.

2. Mail a copy of either this order or the Federal Trade Commission's news release in this matter to every reseller that purchases any product from the Florsheim, Devon or College-Town divisions of Interco Incorporated or from the Londontown Corporation or Queen Casuals, Inc. subsidiaries of Interco Incorporated within five (5) years after the date of service of this order. The mailing required by this paragraph shall occur within thirty (30) days after the first purchase by said reseller.

3. Within thirty (30) days after the date of service of this order distribute a copy of this order to each of their operating divisions and subsidiaries in the United States and to each of their officers, and to sales personnel, sales agents and sales representatives of the Florsheim, Devon and College-Town divisions of Interco Incorporated and of the Londontown Corporation and Queen Casuals, Inc.

subsidiaries of Interco Incorporated engaged in the sale of products to resellers and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Upon written request received within six (6) months from the date of service of this order, reinstate any reseller terminated by a respondent since January 1, 1974 for failing to maintain a certain resale price or sale period, provided that such reseller meets the credit requirements applied by respondents in the retention of resellers.

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

6. For a period of five (5) years from the date of service of this order maintain complete business records which fully disclose the manner and form of respondents' compliance with the order, including but not limited to any records referring or relating in whole or in part to:

(a) any communication between any respondent and any reseller or prospective reseller relating to the price at which any reseller or prospective reseller is selling, proposes to sell, is advertising or proposes to advertise any product;

(b) the termination or suspension of any reseller for any reason;

(c) the refusal to deal with any prospective reseller for any reason;

or

(d) any request for reinstatement pursuant to Part III Paragraph (4) of this order.

The records required by this paragraph shall be made available to Commission staff upon reasonable notice.

7. File with the Commission within sixty (60) days and within one hundred and eighty (180) days after service of this order reports, in writing, setting forth in detail the manner and form in which they have complied with this order.

Final Order on Remand

92 F.T.C.

IN THE MATTER OF

KRAFTCO CORPORATION, ET AL.

FINAL ORDER ON REMAND, OPINION, ETC., IN REGARD TO
ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND
CLAYTON ACTS*Docket 9035. Complaint,¹ June 17, 1975 — Decision, Oct. 4, 1978*

This order on remand from the Second Circuit Court of Appeals is identical to that issued by the Commission on January 11, 1977, 42 FR 10979, corrected at 13820, 89 F.T.C. 46, and requires the SCM Corporation, a New York City producer of margarine, edible oils and barbecue sauce, among other things, to cease seating on its board of directors, any individual who is simultaneously serving on the board of the Kraftco Corporation, or any other competitive company.

ORDER ON REMAND

FINAL ORDER

This matter has been heard by the Commission upon remand from the Second Circuit Court of Appeals. The Commission, for the reasons stated in the accompanying opinion, has determined that an order to cease and desist should be entered. Therefore,

It is ordered, That the following order to cease and desist be, and it hereby is, entered:

ORDER

The following definitions shall apply in this order:

“Subsidiary” of SCM means any corporation, 50 percent or more of the voting stock of which is owned or controlled, directly or indirectly, by SCM.

“Parent” of SCM means any corporation which owns or controls, directly or indirectly, 50 percent or more of the voting stock of SCM.

“Sister” of SCM means any subsidiary of a parent of SCM.

1. *It is ordered*, That respondent SCM Corporation and its successors and assigns shall forthwith cease and desist from having, and in the future shall not have, on their board of directors any individual who either:

(a) serves at the same time as a director of Kraftco Corporation, its successors or assigns (so long as Kraftco and SCM Corporation compete in the production or sale of any product or service), or

¹ For complaint, see 88 F.T.C. 362.

serves at the same time as a director of any other corporation (other than a subsidiary, parent, or sister of SCM) which competes with SCM Corporation in the production or sale of any product or service; or

(b) fails to submit to SCM Corporation any statement required by Paragraph Two of this order to be obtained by SCM.

2. *It is further ordered*, That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, SCM Corporation shall obtain a written statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and from each nominee for a directorship (who is not then a director) showing:

(a) the name and home mailing address of each director or nominee; and

(b) the name and principal office mailing address of, and a listing of each product or service produced or sold by, each corporation which the director or nominee then serves as a director, or has been nominated to serve as a director at the time of the statement.

The requirements of this paragraph shall not apply to elections of directors occurring after five years from the effective date of this order, nor shall directors or nominees be required to list products or services of subsidiaries, sisters, or parents of SCM Corporation.

Nothing in this paragraph shall be construed to relieve respondent of its obligation under paragraph 1(a) hereto due to any error or omission contained in any written statement received pursuant to this paragraph.

3. *It is further ordered*, That within forty-five (45) days of the effective date of this order and annually for a period of ten (10) years thereafter, SCM Corporation shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. Copies of the statements obtained pursuant to Paragraph Two of this order shall be submitted to the Commission as part of the reports of compliance required by this paragraph during the first five (5) years. Nothing in this paragraph shall relieve SCM Corporation of its obligation to comply with Paragraphs One and Four of this order once it is no longer required to submit reports of compliance to the Commission.

4. *It is further ordered*, That SCM Corporation shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of

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

OPINION OF THE COMMISSION

By DIXON, *Commissioner*

This matter is before the Commission upon remand from the Second Circuit Court of Appeals. The Court affirmed the Commission's earlier determination that respondent SCM has violated Section 8 of the Clayton Act (15 U.S.C. 18) by virtue of its maintenance of a common director, Richard C. Bond, with a competitor, Kraftco Corporation. *SCM Corporation v. Federal Trade Commission*, 565 F. 2d 807 (2d Cir. 1977). However, the Court remanded the matter to the Commission for further consideration as to whether there exists some cognizable danger of recurrent violation, a finding that the Court deemed a necessary predicate to any imposition by the Commission of an order to cease and desist. On remand, both sides have filed briefs and reply briefs on this question.

In its original decision in this matter, the Commission, as had the administrative law judge, noted several factors that it believed warranted entry of an order in this case. Among these were the fact that the violation in question had been longstanding in nature, involved more than \$80 million in sales by SCM, and was terminated only following issuance of a complaint by the Commission. *See* 89 F.T.C. 46, 65 (1977). Having made these observations, however, we then went on to state (in addressing SCM's arguments that no order should enter) that

SCM's position here would necessitate that having shown a violation, complaint counsel then demonstrate by affirmative evidence the likelihood of future additional violations. To the contrary, we think the violation is itself the best evidence of the possibility of future such occurrences, and that *the burden rests with respondent to demonstrate that violations will not recur before consideration may be given to omitting an order.* . . . (89 F.T.C. at 66, emphasis added.)

The underlined wording met with the disapproval of the Court of Appeals, which was concerned that the Commission may have applied an incorrect standard and shifted the burden of proof in determining the need for an order.

Our phraseology was plainly infelicitous. What we intended by our words to convey was that record evidence concerning the nature of the violation and the circumstances surrounding it demonstrated to us the need for an order. In the face of such evidence, it was incumbent upon respondent to rebut, if it could, complaint counsel's showing that an order should enter.

Having once again reviewed the evidence and carefully considered the submissions of the parties, we adhere to our earlier conclusion that an order is necessary. We find that there is plainly a cognizable danger of recurrent violation of Section 8 of the Clayton Act in this case. Our conclusion is based upon the facts that the law violation which occurred persisted for a period of 7 years, involved markets in which SCM and its interlocked competitor made over \$300 million in sales (of which \$80 million were SCM's), and was halted only after intervention by the Commission (in this instance, after issuance of the complaint). In our view, these considerations show that SCM acted without adequate attention to its obligations under the law. Having acted in this fashion in the past, and given that it continues to do business and elect directors, we believe there is cognizable danger that SCM will again neglect to prevent the election and service of an interlocking director absent an order to deter it. See *SEC v. Commonwealth Chem. Securities, Inc.*, 574 F.2d 90, 100 (2d Cir. 1978).

In its briefs before the Commission, SCM contends that the grounds cited by complaint counsel, and upon which the Commission relies in finding a danger of recurrent violation, do not constitute "affirmative evidence" in support of the conclusion reached. We disagree.¹ As the Court of Appeals properly reminded us, the mere occurrence of a law violation, however trivial, technical, short-lived, and speedily corrected may not, in and of itself, dictate the need for remedial action. The Commission's holding in its earlier opinion could fairly have been read to say otherwise. We do believe, however, that with corporations as with individuals, past conduct is probative of future behavior. A driver who carelessly runs over a pedestrian is deemed in need of deterrence lest he repeat his act, even though the only significant proof that he is likely to be careless in the future is the fact that he was careless in the past. The same is true of a careless corporation. That a company would elect to its Board of Directors a member who simultaneously directs a competitor in a market in which the two companies share over \$300 million of sales, and that it could retain the director for seven years without detecting, or in any event moving to terminate the interlock, implies to us a degree of disregard for the law's requirements that demands remedy, at least so long as the corporation remains in business and continues to hire directors. If there are genuinely extenuating

¹ We note that the Court of Appeals specifically rejected SCM's assertion that the record is insufficient as a matter of law to support the issuance of an order, 565 F.2d at 813.

circumstances, the corporation is peculiarly well suited to suggest what they are.² Absent such rebuttal, the inference of cognizable danger of recurrent violation must stand.

For its part, SCM has failed to cite any evidence that might tend to overcome the showing made by complaint counsel. Indeed, what SCM has presented adds to our concern that it may again violate the law in the future. In particular, SCM has promised only to refrain from returning Mr. Bond to its board so long as he directs Kraftco or any other competitor of SCM. SCM has not promised to refrain from other interlocks with either Kraftco or any other competitor of SCM, nor has it indicated that it now has or has ever had *any* procedures whatsoever (let alone adequate procedures) for ensuring that it does not violate Section 8 in its choice of directors.³

We are also unpersuaded by SCM's suggestion that the allegedly peculiar nature of Section 8 violations (which harm the public only insofar as they create the potential for anticompetitive abuse), the alleged impossibility of hiding such violations, and their alleged infrequency militate against imposition of an order. It cannot be subject to serious dispute, we believe, that the efforts of federal antitrust agencies to ensure adherence to the antitrust laws depend heavily for their success upon corresponding efforts by the private sector to avoid such violations. It is much more costly for the Federal Trade Commission to determine whether any of SCM's directors simultaneously directs a competitor of SCM than it would be for SCM (which presumably knows who its competitors are) to make the same determination. Unless it is able to create strong monetary incentives for companies which have demonstrated disregard for the law's requirements to maintain such regard in the future, this agency and any other law enforcement agency is relegated to the role of publicly-subsidized house counsel, capable only of spotting violations (to the extent the resources to do so exist) but unable to do more than exhort the violator to mend its ways. We find no precedent to suggest that violations of Section 8 are to be regarded less seriously than any other, or that this agency's ability to enter an order to prevent their recurrence should be subjected to a different standard from that applicable to any other violation of law.

Our conclusions are, we believe, consistent with the mandate of the Court of Appeals, as well as with the teaching of numerous prior

² An example of such extenuating circumstances in an interlock case might be that the corporation in fact maintained rigorous procedures for avoiding interlocks, but such procedures proved inadequate to detect the interlock as the result of circumstances beyond the corporation's reasonable control.

³ We do not mean to suggest that promises made after a Commission investigation has begun are sufficient to obviate the need for an order, *SCM Corp. v. FTC supra*, 565 F.2d at 812, but in this case the limited nature of the promise that was made is further grounds for concern.

decisions which hold that the Commission is empowered to enter an order to cease and desist in circumstances in which the violator has discontinued the illegal conduct and volunteered not to repeat it. *E.g., Fedders Corp. v. FTC*, 529 F. 2d 1398, 1403 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976); *William H. Rorer, Inc. v. FTC*, 374 F.2d 622, 625-26 (2d Cir. 1967); *Coro, Inc. v. FTC*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Hershey Chocolate Corp. v. FTC*, 121 F.2d 968, 971 (3d Cir. 1941); *Perma-Maid Co. v. FTC*, 121 F.2d 282, 284-85 (6th Cir. 1941); *Sears, Roebuck & Co. v. FTC*, 258 F. 307, 310 (7th Cir. 1919); *FTC v. Wallace*, 25 F.2d 733, 738 (8th Cir. 1935).

The order we have entered is identical to the one previously issued. The terms of that order were reviewed by the Commission in the original proceeding, and upon appeal the Court of Appeals expressed no objection, assuming that any order should be deemed appropriate.

Complaint

92 F.T.C.

IN THE MATTER OF

MARATHON OIL COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2931. Complaint, Oct. 18, 1978 — Decision, Oct. 18, 1978*

This consent order, among other things, requires a Findlay, Ohio producer and retailer of petroleum products to cease instituting, or authorizing the institution of debt collection suits in forums other than those in which consumer resided or signed the credit contract. The firm is further required to terminate suits pending in distant counties; vacate resulting default judgments; and provide consumers and credit reporting agencies with notice of such suit terminations.

*Appearances*For the Commission: *Eddie W. Correia.*For the respondent: *William J. Lowrey, Findlay, Ohio.*

COMPLAINT

The Federal Trade Commission, having reason to believe that certain acts and practices engaged in by respondent Marathon Oil Company violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Marathon Oil Company is an Ohio corporation with its principal office located at 539 South Main St., Findlay, Ohio.

PAR. 2. Respondent produces petroleum products and distributes them to consumers for retail purchase.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes the sale, ships and distributes its merchandise to purchasers located in various States of the United States. Therefore, respondent maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent extended credit to holders of its credit card for the purpose of facilitating consumers' purchases of respondents' merchandise.

PAR. 5. In the course and conduct of attempting to collect allegedly delinquent retail credit accounts, respondent instituted collection suits in the name of respondent against consumers in counties other than where the consumers resided or signed the contract sued upon.

PAR. 6. The above acts and practices were all to the prejudice and

injury of the public and constituted unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Cleveland 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 the 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, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Marathon Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 539 South Main St., in the City of Findlay, State of Ohio.

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

ORDER

I

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

"Suits in a distant forum" shall mean retail credit collection suits, other than suits to enforce an interest in real property securing the consumer's obligation, instituted in a judicial district or similar legal entity other than the one in which the consumer signed the contract sued upon or resides at the commencement of the action.

II

It is ordered, That proposed respondent, Marathon Oil Company, a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from instituting, or authorizing the institution of, suits in a distant forum.

III

It is further ordered, That as to any suit in a distant forum instituted by or on behalf of proposed respondent pending on the day this order is served or instituted subsequent to the day on which this order becomes final, such suit shall be terminated and any default judgment entered thereunder vacated forthwith. For such suits instituted prior to the date on which this order is served, "pending" shall mean any suits not reduced to judgment. In all such cases, clear notice shall be provided to the defendants to these actions, to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. 603) which proposed respondent knows or has reason to know recorded the suit or judgment in its files, and to any other person or organization upon request of the defendant.

IV

It is further ordered, That proposed respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit and to each agency with whom proposed respondent currently places its retail credit accounts for collection, and to any other agency prior to referral of proposed respondent's retail credit accounts for collection. Proposed respondent shall obtain and preserve for two (2) years after it terminates its business relationship with any agency with regard to the collection of retail credit accounts, a signed and dated statement from each

agency acknowledging receipt of the order and willingness to comply with it.

V

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

It is further ordered. That proposed respondent shall, within sixty (60) days and at the end of six (6) months after service upon it of this order served upon it, file with the Commission a report, in writing, signed by proposed respondent setting forth in detail the manner and form of its compliance with this order.

Complaint

92 F.T.C.

IN THE MATTER OF
NATIONAL INDEMNITY COMPANY, ET AL.

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

Docket C-2932. Complaint, Oct. 18, 1978 — Decision, Oct. 18, 1978

This consent order, among other things, requires an Omaha, Nebraska insurance company and its subsidiaries to cease failing to provide insurance applicants with required disclosures regarding preparation of investigative consumer reports and the nature and scope of such investigations.

Appearances

For the Commission: *Rena Steinzor.*

For the respondents: *William D. Lyons, Omaha, Neb.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that National Indemnity Company, a corporation, and its subsidiaries: Cornhusker Casualty Company, Home and Automobile Insurance Company, Lakeland Fire and Casualty Company, Texas United Insurance Company, Insurance Company of Iowa and Kansas Fire and Casualty Company, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 National Indemnity Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 3024 Harney St., Omaha, Nebraska.

Respondent Cornhusker Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 105 North 31st Ave., Omaha, Nebraska.

Respondent Home and Automobile Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 101 South Wacker Drive, Chicago, Illinois.

Respondent Lakeland Fire and Casualty Company is a corporation organized, existing and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 6700 France Ave. South, Minneapolis, Minnesota.

Respondent Texas United Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4415 Piedras Drive West, San Antonio, Texas.

Respondent Insurance Company of Iowa is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business located at Box 130, Des Moines, Iowa.

Respondent Kansas Fire and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas with its principal office and place of business located at 400 Kansas Ave., Suite 211, Topeka, Kansas.

Respondent National Indemnity Company has the authority to control the acts and practices of its subsidiaries, as described herein.

PAR. 2. Respondent National Indemnity Company is now and for some time in the past has been engaged in the underwriting and sale to the public of property and liability insurance in forty-five of the fifty states. Each of the other respondents is now and for some time in the past has been engaged in the underwriting and sale to the public of property and liability insurance primarily in the state in which it is incorporated.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly procure or cause to be prepared "investigative consumer reports" from "consumer reporting agencies" as these terms are defined in Section 603(e) and 603(f), respectively, of the Fair Credit Reporting Act, 15 USC 1681a(e) and (f) (1970).

PAR. 4. When respondent National Indemnity Company first issues an insurance policy to an individual, Form NI-1583 labeled "Important Notice" is either attached to the face of the policy or mailed under separate cover immediately upon binding of coverage. This notice is typical and illustrative of the notices used under the same circumstances by the other respondents named herein. No report is actually ordered until the time of issue of the policy. Form NI-1583 reads:

IMPORTANT NOTICE

Dear Policyholder:

Thank you for considering the National Indemnity Company as your insurance

carrier. As part of our underwriting procedure, a routine inquiry may be made to obtain applicable information concerning character, general reputation, personal characteristics, and mode of living. Upon written request, additional information as to the nature and scope of the report, if one is made, will be provided.

This notice is provided in all cases unless the type of policy involved definitely will not require an investigative consumer report.

Respondents send no other notice informing the applicant that an investigative report may be prepared and stating his right to inquire further into the nature and scope of such a report, although wording identical to that of Form NI-1583 is contained in the application itself.

PAR. 5. By and through the use of the practices described in Paragraph Four, above, respondents have failed to inform consumers that: (1) an "investigative consumer report" may be prepared in connection with their applications for insurance; (2) the information contained in the report may be obtained through personal interviews with neighbors, friends or others with whom the consumer is acquainted; and (3) upon written request, a complete and accurate disclosure of the nature and scope of the investigative report will be provided. Therefore, respondent has violated the provisions of Section 606(a) of the Fair Credit Reporting Act.

PAR. 6. Once the applicant has received the Notice contained in Form NI-1583 and has written to respondent indicating a desire to receive "additional information as to the nature and scope of the report," respondent National Indemnity Company issues a follow-up form, numbered NI-1584. This notice is typical and illustrative of the notices used under the same circumstances by the other respondents named herein. This form reads:

This is in response to your request for additional information about an inquiry or report which may have been made in connection with your application for insurance.

- No report was requested in connection with your application.
- A report was requested. These reports are routine procedures which include such general identification information as residence verification, marital status, and number of children. As applicable, employment, occupation, general health (sic), habits, reputation and mode of living information may be included.

When insurance coverage for automobile(s), other personal property or real property is involved, applicable information may include a physical description of the property, its condition and uses, and any losses incurred. For automobile insurance, additional information concerning drivers and any physical impairments, losses or violations they may have suffered is also applicable.

NATIONAL INDEMNITY COMPANY

The above disclosure is provided in response to all consumer

requests for disclosure of the nature and scope of the investigation completed.

Respondents typically send no other letter to consumers who request additional information concerning investigative consumer reports which were procured or prepared about them.

PAR. 7. By and through the use of the practices described in Paragraph Six above, respondents have failed to inform the consumer of the name and address of the consumer reporting agency which prepared the investigatory report; the type of questions asked; and the number and type of persons interviewed. Therefore, respondents have violated the provisions of Section 606(b) of the Fair Credit Reporting Act.

PAR. 8. By its aforesaid failure to comply with Sections 606(a) and 606(b) of the Fair Credit Reporting Act, and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Fair Credit Reporting Act 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 Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its

Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent National Indemnity Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 3024 Harney St., Omaha, Nebraska.

Respondent Cornhusker Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 105 North 31st Ave., Omaha, Nebraska.

Respondent Home and Automobile Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 101 South Wacker Drive, Chicago, Illinois.

Respondent Lakeland Fire and Casualty Company is a corporation organized, existing and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 6700 France Ave. South, Minneapolis, Minnesota.

Respondent Texas United Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4415 Piedras Drive West, San Antonio, Texas.

Respondent Insurance Company of Iowa is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business located at Box 130, Des Moines, Iowa.

Respondent Kansas Fire and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas with its principal office and place of business located at 400 Kansas Ave., Suite 211, Topeka, Kansas.

Respondent National Indemnity Company has the authority to control the acts and practices of its subsidiaries, as described herein.

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

ORDER

It is ordered, That respondents, National Indemnity Company, a corporation, and its subsidiaries: Cornhusker Casualty Company, Home and Automobile Insurance Company, Lakeland Fire and Casualty Company, Texas United Insurance Company, Insurance Company of Iowa and Kansas Fire and Casualty Company, their

successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with either the request for or the receipt or consideration of any "investigative consumer report," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(e) (1970)), do forthwith cease and desist from:

(1) Failing, whenever respondents procure or cause to be prepared an investigative consumer report, to clearly and accurately disclose to the consumer that:

(A) an "investigative consumer report" may be made in connection with the application, including information regarding the consumer's character, general reputation, personal characteristics or mode of living;

(B) the information contained in the report will be obtained through personal interviews with neighbors, friends, or associates of the consumer or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information; and,

(C) the consumer has the right to request, within a reasonable period of time, a complete and accurate disclosure of the nature and scope of the investigative report, and that upon such request respondents shall make such disclosure in writing mailed or otherwise delivered to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or the investigative report was first requested, whichever is later.

(2) Failing, whenever an applicant requests additional information concerning an investigative consumer report to furnish the consumer with a complete and accurate disclosure of the nature and scope of the investigation requested including:

(A) the name and address of the consumer reporting agency which prepared the investigative report; and,

(B) a detailed written summary of the areas investigated and the types of questions asked which includes a description of all the information covered by the interview forms typically used to prepare the investigative consumer report. In lieu of a written summary, respondents may satisfy the requirements of this subsection by providing the consumer with a blank copy of any standardized form used to transmit information from the consumer reporting agency to the user, to the extent to which these forms itemize with specificity the questions to be asked and the areas to be investigated; and,

(C) if the investigative consumer report has been completed at the time the consumer makes his request, the number and type of

persons interviewed, if known, or, if not known, the usual number and type of persons interviewed. If the report has not been completed at the time of the request, the minimum number and type of persons normally interviewed in connection with such a report.

It is further ordered, That respondents shall preserve evidence of compliance with the requirements imposed under this order for a period of not less than 2 years after the date each required disclosure is made. Respondents shall upon request permit the Commission through its daily authorized representatives to inspect such records.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for insurance to be used for personal, family or household purposes.

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 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
COVENTRY BUILDERS, INC., ET AL.

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

Docket 9042. Complaint¹ July 15, 1975 — Decision, Oct. 23, 1978

This consent order, among other things, requires a Shaker Heights, Ohio home improvements firm to cease, in connection with the extension of credit, failing to provide consumers with those materials and disclosures required by Federal Reserve System regulations.

Appearances

For the Commission: *Aaron H. Bulloff, Allan M. Huss and Sharon J. Devine.*

For the respondents: *Leonard P. Gilbert, Cleveland, Ohio, Stanley M. Fischer and David A. Schaefer, Guren, Merritt, Sogg & Cohen, Cleveland, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Coventry Builders, Inc., a corporation, and Louis Galiano, Sr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and of 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 Coventry Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1824 Coventry Road, Cleveland Heights, Ohio.

Respondent Louis Galiano, Sr. is an individual and is the president of respondent corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts

¹ Reported as amended by the ALJ's order of March 5, 1976.

and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, delivery, and installation of residential home improvements including, but not limited to, siding materials, storm windows, plumbing fixtures, and cabinetry, to the public at retail.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, have been, and continue to be, engaged in the extension of credit, as the term "credit" is defined in Section 226.2(1) of Regulation Z.

Respondents many times have caused, and are now causing, their customers to execute a document entitled "Offer of Purchase," hereinafter sometimes referred to as "the sales contract," and one or more promissory notes for the purchase and installation of home improvements to the residence of the customer.

Respondents provide certain consumer credit cost information as part of this sales contract. Respondents provide no other consumer credit cost disclosures to their customers.

PAR. 5. Respondents many times, in the ordinary course of their business, negotiate to third parties the sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 6. By and through the use of the sales contract, respondents:

(1) Have in certain instances failed to disclose the annual percentage rate, as required by Section 226.8(b)(2) of Regulation Z, computed with an accuracy at least to the nearest one quarter of one percent, as prescribed by Section 226.5(b) of Regulation Z.

(2) Have in certain instances failed to preserve evidence of compliance with the requirements of Regulation Z for a period of not less than two years after the date each disclosure was required to be made, as required by Section 226.6(i) of Regulation Z.

(3) Have in certain instances failed to make the disclosures

prescribed by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

(4) Have in certain instances failed to furnish customers with a duplicate of the instrument or a statement by which the disclosures prescribed by Section 226.8 of Regulation Z are made, and on which the creditor is identified, as required by Section 226.8(a) of Regulation Z.

(5) Have in certain instances failed to disclose the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

(6) Have in certain instances failed to provide a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

(7) Have in certain instances failed to give clear identification of the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

(8) Have failed 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.

(9) Have failed to disclose the sum of the unpaid balance of cash price and all other charges included in the amount financed but which are not part of the finance charge, and to describe that sum using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

PAR. 7. By and through the use and acceptance of the sales contract, and by virtue of the work performed on a customer's residence, respondents have retained or acquired, or will retain or acquire, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, in real property which is used or is expected to be used as the principal residence of the customer. Respondents' retention or acquisition of such security interest in said real property gives their customers who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction or the date of delivery of all disclosures required by Regulation Z, whichever is later, pursuant to Section 226.9(a) of Regulation Z.

PAR. 8. In connection with the aforesaid consumer credit transactions, as set forth in Paragraph Seven, respondents, in certain instances:

(1) Have failed to give notice to the customer of his right to rescind the credit transaction by furnishing him with the "notice to customers required by federal law," described in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Have failed to delay performance of any of the following actions until after the rescission period has expired, and they have reasonably satisfied themselves that the customer has not exercised his right of rescission, as required by Section 229.9(c) of Regulation Z:

- a. The disbursement of monies other than in escrow;
- b. The making of any physical changes in the property of the customer;
- c. The performance of any work or service for the customer; or
- d. The making of any deliveries to the residence of the customer if the creditor has retained or will retain or will acquire a security interest other than one arising by operation of law.

PAR. 9. Respondents have stated, utilized, or placed information or explanations not required by Regulation Z in the various versions of their sales contracts, in a manner which misleads or confuses the customer or contradicts, obscures, or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

PAR. 10. By the aforesaid actions, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, respondents' aforesaid failures to comply with Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and the respondents having been served with a copy of that complaint, 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 as issued 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 thereafter withdrawn this matter from adjudication in accordance with Section 3.25 of its Rules; and

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

1. Respondent Coventry Builders, Inc. is a corporation formerly organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business formerly located at 13015 Larchmere, in the City of Shaker Heights, State of Ohio.

Respondent Louis Galiano, Sr. was an officer of said corporation. He formulated, directed, and controlled the policies, acts, and practices of said corporation. His address is 231 - 174th St., North Miami Beach, Florida.

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 Coventry Builders, Inc., a corporation, its successors and assigns, and its officers, and Louis Galiano, Sr., 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 extension of consumer credit or advertisements to aid, promote, or assist, directly or indirectly, in the extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

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

(2) Failing to retain evidence of compliance with the requirements of Regulation Z for a period of not less than two (2) years after the date each disclosure was required to be made, as required by Section

226.6(i) of Regulation Z. Evidence of compliance shall include, but not be limited to, copies of all disclosure statements and rescission statements required by Regulation Z, which pertain to contracts ultimately rescinded, modified, renegotiated, or otherwise not accepted either by respondents or by the consumer.

(3) Failing to furnish customers with the disclosures prescribed by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

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

(5) Failing to disclose the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

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

(7) Failing to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

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

(9) Failing to disclose the sum of the unpaid balance of cash price and all other charges included in the amount financed but which are not part of the finance charge, and to describe that sum using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

(10) Supplying any information, explanation, or contract clause not required to be disclosed by Regulation Z in a manner which misleads or confuses the customer or contradicts, obscures, or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

(11) Failing to provide consumers having the right to rescind a transaction pursuant to Section 226.9 of Regulation Z with two copies of the "Notice to the Consumer Required by Federal Law," in the manner and form required by Section 226.9(b) of Regulation Z.

(12) Failing to delay performance until after the period of time allowed for rescission by the consumer has expired and respondents herein have reasonably satisfied themselves that the customer has not exercised his right of rescission, as required by Section 226.9(c) of

Regulation Z. In this regard, respondents shall not perform, or cause or permit to be performed, during the rescission period, any of the following actions:

- (a) The disbursement of monies other than in escrow;
- (b) The making of any physical changes in the property of the customer;
- (c) The performance of any work or service for the customer; or
- (d) The making of any deliveries to the residence of the customer if the creditor has retained or will retain or will acquire a security interest other than one arising by operation of law.

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

It is further ordered, That respondents deliver a copy of this order to all present and future sales and office personnel whose services are engaged by respondents, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, voluntary bankruptcy, assignment, the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of this order, or any other change in the corporation which may affect compliance obligations arising out of this 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 or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondents shall, within sixty (60) days after the effective date of this order, file with the Commission a report setting forth the manner in which they have complied with the provisions of this order, and any future compliance reports in the form and manner which the Commission may order.

Complaint

92 F.T.C.

IN THE MATTER OF

MOORE & ASSOCIATES, INC., ET AL., TRADING AS UNI-CHECK, ETC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING
ACTS*Docket C-2933. Complaint, Oct. 24, 1978 — Decision, Oct. 24, 1978*

This consent order, among other things, requires a Honolulu, Hawaii firm engaged in providing various businesses with consumer credit information and other services, to cease furnishing reports containing obsolete, inaccurate, or disputed information; providing such reports for improper purposes; or otherwise failing to comply with statutory requirements.

*Appearances*For the Commission: *Harold G. Sodergren.*For the respondent: *Peter G. Wheelon, Honolulu, Hawaii.*

COMPLAINT

I

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Moore & Associates, Inc., a corporation, doing business as Uni-Check, and Rentcheck, and R. Donald Moore, individually and as an officer of said corporation, hereinafter referred to as "respondents," have violated the provisions of said Acts, 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 Moore & Associates, Inc. is a Hawaii corporation, with its principal office at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii.

Respondent R. Donald Moore 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.

II

PAR. 2. A. Respondents, in the ordinary course and conduct of their

business under the tradename "Uni-Check," guarantee personal checks presented by consumers to merchants and banks. A subscriber to the service telephones respondents' computerized record system, provides a consumer's identifying number (e.g., driver's license number, credit card number), and receives a coded response indicating, among other things, whether respondents will guarantee the consumer's check which has been tendered to the subscriber.

B. Respondents, in the ordinary course and conduct of their business under the tradename "Rentcheck," guarantee landlords against financial loss resulting from non-payment of rent, malicious damage, or breach of lease. A subscriber to the service, prior to occupancy of the dwelling by a prospective tenant, follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response indicating, among other things, whether respondents will guarantee the landlord against financial loss caused by the prospective tenant.

C. Respondents, in the ordinary course and conduct of their business, in conjunction with their Rentcheck service, provide landlords not desiring a guarantee against financial loss pursuant to a "Non-Guarantee Plan," with adverse information relating to a prospective tenant, where respondents have adverse information on file. The landlord follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response. If the response indicates adverse information is on file, the landlord obtains detailed information regarding the prospective tenant from respondents in a subsequent communication.

D. Respondents, in the ordinary course and conduct of their business, provide banks with information regarding consumers making application for checking accounts. The bank follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response. If the response indicates adverse information is on file, the bank obtains detailed information regarding the applicant from respondents in a subsequent communication.

PAR. 3. The data regarding consumers which is utilized by respondents in supplying the above information to subscribers is contained in a single computer data base, and consists of information relating to dishonored checks, cancellation of credit cards, termination of checking accounts, non-payment of rent, damage to property, breach of lease, and other information.

A. The communication by respondents to a subscriber, in connection with the Uni-Check service described in Paragraph 2A, that respondents will not guarantee a consumer's check, is the

communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

B. The communication by respondents to a subscriber, in connection with the Rentcheck service described in Paragraph 2B, that respondents will not guarantee that a prospective tenant will not cause the landlord financial loss, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

C. The communication by respondents to a subscriber, in connection with the Rentcheck "Non-Guarantee Plan" described in Paragraph 2C, that respondents possess adverse information regarding a prospective tenant, or the communication of such adverse information, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

D. The communication by respondents to a subscriber in connection with persons making application for the bank checking account service described in Paragraph 2D, that respondents possess adverse information regarding a prospective account holder, or the communication of such adverse information, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 4. Respondents are, and have been, for monetary fees, regularly engaged in the practice of assembling information on consumers for the purpose of communicating such information to third parties, as described in Paragraphs Two and Three above, and regularly use, and for some time last past have regularly used, a means of facility of interstate commerce for the purpose of preparing and/or furnishing such communications. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 5. In the course and conduct of their business of communicating information to third parties, as described in Paragraphs Two, Three, and Four, above, respondents have:

A. Failed to maintain reasonable procedures designed to prevent, in accordance with Section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of certain items of obsolete information, as required by Section 607(a) of the Fair Credit Reporting Act.

B. Failed, as to subscribers to respondents' services, to establish procedures requiring said subscribers to certify the purposes for which the information on consumers is sought, and to certify that the information will be used for no other purpose. Therefore, respondents failed to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes specified under Section 604 of the Fair Credit Reporting Act, as required by Section 607(a) of the Fair Credit Reporting Act.

C. Failed, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, 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, as required by Section 611(c) of the Fair Credit Reporting Act.

Therefore, respondents have violated, and are violating, Sections 607(a) and 611(c) of the Fair Credit Reporting Act.

III

PAR. 6. Respondents, in the ordinary course and conduct of their business, provide by telephone to subscribing hotels in the State of Hawaii, the uncoded identity of a person who has been reported by another subscribing hotel to have failed to pay a hotel charge. Such communication is made by respondents to a subscribing hotel prior to the subscribing hotel's need for such information, premised upon a request by such person for services at the subscribing hotel to which such person's identity is communicated.

PAR. 7. The communication of the identity of persons who have failed to pay a hotel charge to other hotels in the aforesaid manner is the communication of information which bears on said person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 8. Respondents are, and have been, for monetary fees,

regularly engaged in the practice of assembling such information on consumers for the purpose of communicating such information to third parties, as described in Paragraphs Six and Seven above, and regularly use a means or facility of interstate commerce for the purpose of preparing and/or furnishing such information. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 9. At the time respondents furnish each of the consumer reports described in Paragraphs Six, Seven, and Eight, above, respondents do not have reason to believe that each person to whom the consumer report is furnished has a legitimate business need for the information in such report in connection with a business transaction involving the consumer reported upon, nor do respondents have reason to believe that each recipient otherwise intends to use the information contained in such report for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer report is neither in response to a court order nor in accordance with the written instructions of the consumer to whom the report relates.

Therefore, respondents, in the ordinary course and conduct of their business, as aforesaid, furnish consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(3) of the Act.

Therefore, by furnishing consumer reports in the manner described above, respondents have violated, and are violating, Section 604 of the Fair Credit Reporting Act.

PAR. 10. By and through the acts and practices described in Paragraphs Six, Seven, Eight, and Nine, above, respondents have failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and have furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for a purpose listed in Section 604 of such Act.

Therefore, respondents have violated and are violating, Section 607(a) of the Fair Credit Reporting Act.

IV

PAR. 11. The acts and practices set forth in Paragraphs Two through Ten, above, were and are in violation of the Fair Credit

Reporting Act, and, pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Moore & Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business located at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii.

Respondent R. Donald Moore is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his personal 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 Moore & Associates, Inc., a corporation, d/b/a Uni-Check, Rentcheck, or under any other name, its successors and assigns, and its officers, and R. Donald Moore, 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 collecting, preparing, assembling and/or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. 1601, *et seq.*), shall forthwith cease and desist from:

1. Failing to maintain reasonable procedures designed to prevent, in accordance with Section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of obsolete information, as required by Section 607(a) of the Fair Credit Reporting Act.

2. Furnishing any consumer report to any person, unless such report is furnished:

a. In response to the order of a court having jurisdiction to issue such order; or

b. In accordance with the written instructions of the consumer to whom the report relates; or

c. To a person whom respondents then have reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving the consumer.

Provided, however, a consumer report may be furnished prior to a time when respondents have reason to believe a person intends to use the information for a purpose enumerated in subsection c, above, if the identity of the consumer(s) to whom the information relates is not disclosed on such consumer report and cannot be determined

without the use of a unique identifier, such as a social security number, driver's license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user. Communication of information pursuant to this proviso does not relieve respondents of responsibility to comply with all order requirements of the order in connection with such transaction.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Act, as provided by Section 607 of the Act.

4. Failing to require prospective users of consumer reports to certify the purposes for which the information in such reports is sought, and that it will be used for no other purpose, in accordance with Section 607(a) of the Fair Credit Reporting Act.

5. Furnishing consumer reports to any user or prospective user of such reports who does not first provide the identification and the certification of purpose for which information in such reports is sought, as required by Section 607(a) of the Fair Credit Reporting Act.

6. Failing, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, to clearly note, in any subsequent 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, as required by Section 611(c) of the Fair Credit Reporting Act.

7. Failing to comply with all requirements relating to consumer reporting agencies contained in Sections 604, 605, 607, 609, 610, 611, 612, 613, and 614 of the Fair Credit Reporting Act.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

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

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new

business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities involve consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. 1601, *et seq.*), or of his affiliation with a new business or employment in which his own duties and responsibilities involve consumer reports. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall within sixty (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
BEDE AIRCRAFT, INC., ET AL.

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

Docket C-2934. Complaint, Oct. 26, 1978 — Decision, Oct. 26, 1978

This consent order, among other things, requires a Washington, D.C. manufacturer and marketer of aircraft and related products, and its subsidiaries, to provide and administer as prescribed an approximately \$9,000,000 redress fund for consumers who purchased or made deposits on its products. The firm is required to cease misrepresenting the availability, performance, reliability, and safety of its aircraft; or using any other unfair or deceptive act or practice in the advertising and sale of its products. Additionally, until such time that existing obligations are satisfied, the order requires that all of the firm's stock be placed in the hands of an approved trustee who would oversee its operations, and invoke the provisions of the federal Bankruptcy Act if necessary.

Appearances

For the Commission: *Kenneth R. Bennington.*

For the respondents: *Dale Curtis Hogue* and *William R. Bernard, Hogue, Crothers & Bernard, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bede Aircraft, Inc., a corporation, Bede General Corporation, a corporation; Bede Wing, Inc., a corporation; James R. Bede, individually and as an officer, director and stockholder of said corporations; hereinafter referred to as respondents, have violated 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 the enumerated paragraphs below.

Allegations of respondents' present acts and practices include respondents' past acts and practices. Allegations in the present tense include the past tense. Allegations of respondents' representations or statements include those made directly or by implication, those made in sales contracts, advertising, promotional materials and sales communications, and representations made orally, visually, or in writing.

For purposes of the allegations enumerated herein, the following definitions apply:

The phrase "advance payment or deposit" means a payment or deposit tendered to respondents in connection with the order or sale of any product, under circumstances in which shipment to the buyer will not take place on the same day on which such payment or deposit is tendered;

"BD-5 homebuilt aircraft" means any aircraft materially within the design parameters of the single-seat, single-engine aircraft commonly referred to by respondents as the "BD-5," which is advertised for sale or sold for full or partial assembly from a kit or from parts, materials or plans supplied wholly or partially by respondents;

"BD-5D aircraft" means any aircraft materially within the general design parameters of the single-seat, single-engine aircraft commonly referred to by respondents as the "BD-5," which is advertised for sale or sold as a production aircraft (as the word "production" is defined herein);

"BD-7 aircraft" means any aircraft materially within the general design parameters of the two to four place, low-wing aircraft commonly referred to by respondents as the "BD-7;"

"FAA" means the Federal Aviation Administration, an agency of the United States Government;

"production" means, in describing any product, that such product is commercially manufactured or fabricated in significant numbers for ultimate distribution or sale in the usual course of business, as opposed to being manufactured or fabricated in small numbers as a model or prototype, or for limited distribution or use not in the usual course of trade;

"proper refund request" means a written notification reasonably calculated to put the refundor on notice that the refundee wishes to exercise a present or future right to a refund. In the latter instance, the refund request becomes "proper" when the right to refund actually vests;

"ship, shipping or shipment" refer to the act by which merchandise is physically placed by respondents in possession of the carrier, or if there is no carrier, in possession of the buyer or his agent; or in the case of aircraft, transfer of the FAA title certificate;

"specialized tools, machines or processes" means tools or machines which a homebuilder of average ability and resources would not reasonably be expected to own, or in the case of processes, those which such homebuilder would not be reasonably expected to be capable of personally performing.

PARAGRAPH 1. Respondent Bede Aircraft, Inc. is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Kansas, with an office located at 1128 Sixteenth St., N.W., Washington, D. C.

Respondent Bede General Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with an office located at 1128 Sixteenth St., N.W., Washington, D. C.

Respondent Bede Wing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with an office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent James R. Bede is sole stockholder and an officer and director of respondents Bede Aircraft, Inc., and Bede General Corporation. Respondent Bede is a stockholder, officer and director of respondent Bede Wing, Inc.

Respondent James R. Bede formulates, directs and controls the acts and practices of respondents Bede Aircraft, Inc., Bede General Corporation, and Bede Wing, Inc. The business address of respondent Bede is 1128 Sixteenth St., N.W., Washington, D.C.

Respondents have cooperated and acted together to bring about the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time have been, engaged in the business of advertising, offering for sale and selling homebuilt aircraft kits, production aircraft, and aircraft parts plans, materials and accessories. Respondents' aforesaid business is carried on both directly and indirectly, and through the use of licensees or franchisees.

Respondents furnish the means and instrumentalities for a sales program whereby members of the general public, by means of advertisements placed in media of general circulation, promotional brochures and other media, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts, make deposits for future deliveries, or otherwise obligate themselves for the purchase of various of respondents' products.

In the manner aforesaid, respondents dominate, control, furnish the means, instrumentalities, services and facilities for, and condone, approve, and accept the pecuniary and other benefits following from the acts and practices hereinafter set forth of respondents' employees, franchisees and licensees. By and through the use of the acts, practices, statements and representations set forth herein, respondents place in the hands of others the means and instrumentalities by and through which such others mislead and deceive the public in the manner and as to the things herein alleged.

PAR. 3. Respondents' volume of business is substantial and their

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

PAR. 4. In the course and conduct of their business, and all times mentioned herein, respondents have been and now are in substantial competition in or affecting commerce, with corporations, firms and individuals in the sale of aircraft, aircraft kits and aircraft parts, plans, materials and accessories.

COUNT ONE

Alleging certain violations of Section 5 of the Federal Trade Commission Act. The allegations of Paragraphs One through Four hereof are incorporated by reference in Count One as if fully set forth verbatim.

PAR. 5. In the further course and conduct of their business, respondents have prepared financial statements, including balance sheets, income statements and other documents purporting to reflect material aspects of respondents' financial status; respondents have transmitted such financial statements to third parties, representing to such third parties that such statements accurately and truthfully reflect respondents' financial status as of the time to which such statements purport to relate.

Respondents have failed to prepare such financial statements in accordance with generally accepted accounting standards, and have failed to disclose such failure in a clear and conspicuous manner. Respondents have misrepresented the truthfulness and accuracy of such financial statements under circumstances in which respondents knew or should have known that such documents portrayed respondents' financial status and ability to fulfill its consumer obligations in a significantly more positive manner than was in fact the case.

By so failing to prepare financial statements in accord with generally accepted accounting standards, by nondisclosure of such failure and by so misrepresenting the truthfulness and accuracy of such statements, respondents have engaged in unfair and deceptive acts or practices.

PAR. 6. In the further course and conduct of their business, respondents have represented that Bede Aircraft, Inc. is a solvent, ongoing enterprise, capable of fulfilling its obligations and duties, and that the corporation maintains a solid financial basis and every prospect for a continued viable, active business existence.

In truth and in fact, Bede Aircraft, Inc. has, during much of its corporate existence, been insolvent as "insolvent" is defined in the

Bankruptcy Act, 11 USCA 1; Bede Aircraft, Inc., has also from time to time committed acts of bankruptcy, as such acts are defined in the Bankruptcy Act, 11 USCA 21. Respondent Bede Aircraft, Inc. has been in a precarious financial position during much of its corporate existence, unable to pay its debts as they come due, and has engaged in business under circumstances raising reasonable doubts about the corporation's ability to discharge its consumer obligations and duties, and to continue a viable, active business existence.

Respondents have misrepresented material facts with respect to the solvency and business health of Bede Aircraft, Inc.; respondents have also failed to disclose relevant and material facts with respect to the solvency of Bede Aircraft, Inc. in the course and conduct of business with customers, who, had they been aware of such facts, may have substantially altered or abated their dealings with respondents. By so misrepresenting material facts, and by so failing to disclose relevant and material facts, respondents have engaged in unfair and deceptive acts or practices.

PAR. 7. In the further course and conduct of their business under the circumstances set forth in Paragraph Six, respondents have failed to avail themselves of the various remedial procedures of the Bankruptcy Act, including reorganization, rehabilitation, or liquidation. By so failing to avail themselves of such remedial devices, respondents have prejudiced the ability of their customers, to receive the benefits of contracts and agreements with respondents, or in the alternative, to receive restitution of amounts paid or deposited with respondents.

By so failing to avail themselves of the remedial devices of the Bankruptcy Act and by so prejudicing the rights of their customers, respondents have engaged in unfair acts or practices.

PAR. 8. During the course and conduct of their business, respondents represented that Bede General Corporation actually existed as a business entity legally authorized to do business as a corporation. Respondents further represented that Bede General Corporation was an entity separate from respondents' other business operations, with all of the tangible and intangible attributes of an active, viable, corporation.

In truth and in fact, during much of the period concerned in this complaint Bede General Corporation did not legally exist as a corporate entity; respondents failed to comply with the laws of any jurisdiction entitled to authorize corporate existence, and further failed to supply Bede General Corporation with business and financial attributes other than those constituting an illusory corporate existence. Respondents further failed to disclose such facts

to customers who, had they been aware of such facts may have substantially altered or abated their dealings with respondents.

By so failing to supply Bede General Corporation with the legal attributes of incorporation as well as the attributes implied by respondents' representations, and by further failing to disclose material facts with respect to such circumstances, respondents have engaged in unfair and deceptive acts or practices.

COUNT TWO

Alleging violations of Section 5 of the Federal Trade Commission Act, with respect to the BD-5 homebuilt aircraft. The allegations of Paragraphs One through Four hereof are incorporated by reference in Count Two as if fully set forth verbatim.

PAR. 9. In the further course and conduct of their business, respondents have represented that they have actually available for sale, ready to ship, complete kits for the assembly of the BD-5 homebuilt aircraft.

In truth and in fact, respondents do not have available for immediate shipment complete BD-5 homebuilt aircraft kits, nor do such complete kits exist. Significant elements, including key parts, assembly plans and instructions, and engine and drive system subassemblies, have not been fully developed or procured, and are not available to respondents for shipment to buyers of the BD-5 homebuilt aircraft kit. Therefore, the acts and practices described in Paragraph Nine are deceptive.

PAR. 10. In the further course and conduct of their business, respondents have represented that upon remittance of the proper contract amount for the purchase of the BD-5 homebuilt aircraft kit, respondents will begin and complete delivery of various kit installments according to a predetermined schedule calculated to provide the homebuilder with necessary parts, plans and materials in a logical sequence and at reasonable intervals.

In truth and in fact, at all times concerned herein, respondents could not complete delivery of necessary kit elements in a logical sequence or at reasonable intervals, since significant elements have been unavailable to respondents and the date of availability of such elements is not known to respondents with reasonable certainty. Therefore, the acts and practices described in Paragraph Ten are deceptive.

PAR. 11. In the further course and conduct of their business, respondents have represented that BD-5 homebuilt aircraft kits contain production engines and drive systems which are capable of

certain affirmatively stated criteria with respect to performance, reliability and safety.

In truth and in fact, engine and drive system subassemblies have not been developed or produced, beyond the prototype or experimental stage. Accordingly, no production engines or drive systems exist which meet respondents' representations with respect to performance, reliability and safety. Respondents have failed to disclose that representations with respect to performance, reliability and safety are based upon design inferences and expectations, rather than upon data derived from the actual use and testing of production engines and drive systems. Therefore, the acts and practices described in Paragraph Eleven are unfair and deceptive.

PAR. 12. In the further course and conduct of their business, respondents have represented that no more than 800 work hours are required for the homebuilder to fully assemble the BD-5 homebuilt aircraft.

In truth and in fact, homebuilders of average ability have found that substantially more than 800 work hours are necessary to assemble the BD-5 homebuilt aircraft. Respondents lacked a reasonable basis for such representations and have failed to remedy or correct such representations as evidence has accumulated tending to show that respondents' estimates and representations were significantly below the results of actual homebuilder experience. Therefore, the acts and practices described in Paragraph Twelve are unfair and deceptive.

PAR. 13. In the further course and conduct of their business, respondents have represented that the homebuilder will need only simple hand tools for assembly of the BD-5 homebuilt aircraft kit.

In truth and in fact, with respect to certain subassemblies, specialized tools, machines or processes are necessary to complete the aircraft kit according to respondents' specifications and plans. Respondents have failed to disclose that the homebuilder must acquire specialized equipment, or resort to a third party such as a commercial welding or machine shop for completion of certain kit assembly operations. Therefore, the acts and practices described in Paragraph Thirteen are unfair and deceptive.

PAR. 14. In the further course and conduct of their business, respondents have represented that money deposited or paid for some or all subassemblies of the BD-5 homebuilt aircraft would, to the extent that further research and development was necessary to perfect such subassemblies, actually be used directly or indirectly for such purposes.

In truth and in fact, significant amounts of money deposited or

paid by buyers for some or all subassemblies of the BD-5 homebuilt aircraft has been diverted by respondents to research and development with respect to other of respondents' products, as well as other uses, not related to development of the BD-5 homebuilt aircraft, under circumstances in which further research and development was necessary in order to perfect certain subassemblies of BD-5 homebuilt aircraft. Therefore, the acts and practices described in Paragraph Fourteen are deceptive.

PAR. 15. In the further course and conduct of their business, respondents have represented that the BD-5 homebuilt aircraft may be easily and safely flown by an inexperienced pilot.

In truth and in fact, respondents' representations with respect to pilot skill and experience are based on design inference and expectations rather than upon actual flight experience sufficient to evaluate requisite pilot proficiency. Respondents lack a reasonable basis for representations with respect to such requisite pilot skill and experience, and have failed to disclose that the representations made are not based upon actual flight experience sufficient to evaluate requisite pilot proficiency. Therefore, the acts and practices described in Paragraph Fifteen are unfair and deceptive.

PAR. 16. The aforesaid false, misleading and deceptive representations made by respondents, have the tendency or capacity to mislead substantial number of consumers, and to induce said consumers to purchase substantial quantities of products from respondents and respondents' licensees or franchisees based upon such tendency or capacity to mislead.

PAR. 17. In the further course and conduct of their business, respondents have entered into agreements, or otherwise obligated themselves to refund payments and deposits received from customers; respondents have concurrently agreed or otherwise obligated themselves to promptly issue such refunds.

Respondents have consistently failed to issue properly requested refunds. Respondents have engaged in numerous practices designed to deceive customers as to the customer's actual right to a refund, the circumstances under which refunds will be made, and the date on which a refund will be made. Respondents have further engaged in practices designed to coerce customers into acquiescing to refund delay. Respondents have received numerous legitimate refund requests which have gone unsatisfied for in excess of three years.

By so obligating themselves to issue properly requested refunds in a prompt manner and then failing to issue such refunds, and by engaging in the above-enumerated practices designed to resist and

delay issuance of properly requested refunds, respondents have engaged in unfair acts and practices.

PAR. 18. In the further course and conduct of their business, respondents have had the use and benefit of, and have retained substantial amounts of money received as advance payments and deposits as a result of the unfair and deceptive acts as set forth in Count Two, herein.

Respondents have failed to pay interest upon money received as a result of such unfair acts and practices.

By so retaining money received, and by so failing to pay interest, respondents have engaged in unfair acts and practices.

PAR. 19. The acts and practices as herein alleged, are to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT THREE

Alleging violations of Section 5 of the Federal Trade Commission Act, with respect to the BD-5D aircraft. The allegations of Paragraphs One through Four hereof are incorporated by reference in Count Three as if set forth verbatim.

PAR. 20. In the further course and conduct of their business, respondents have represented that the BD-5D aircraft will be manufactured, assembled, and ready for delivery as of a specified future date. Accordingly, respondents represented that there existed, at the time such representations were made, a reasonable basis for such representations.

In truth and in fact, respondents lack a reasonable basis for representations made with respect to a specific date on which the BD-5D aircraft will be manufactured, assembled and ready for delivery. Respondents lack sufficient knowledge or expertise to predict, *inter alia*, the time necessary for procurement of requisite FAA airframe certification and engine certification, and the time necessary to fully develop, test, perfect and produce an engine capable of meeting respondents' representations with respect to performance, reliability and safety. Therefore, the acts and practices described in Paragraph Twenty are unfair and deceptive.

PAR. 21. In the further course and conduct of their business, respondents have represented that engines and drive systems exist which are capable of certain specifically stated criteria with respect to performance, reliability and safety.

In truth and in fact, engine and drive system assemblies have not

been developed or produced beyond the prototype or experimental stage. Accordingly, no production engines or drive systems exist, meeting respondents' representations with respect to performance, reliability and safety. Respondents have failed to disclose that representations with respect to performance, reliability and safety are based on design inferences and expectations, rather than upon data derived through use and testing of production engines and drive systems. Therefore, the acts and practices described in Paragraph Twenty-One are unfair and deceptive.

PAR. 22. In the further course and conduct of their business, respondents have represented that the BD-5D aircraft can be easily and safely flown by an inexperienced pilot.

In truth and in fact, respondents have failed to disclose that representations with respect to pilot skill and experience are based on inference and expectations rather than upon actual flight experience sufficient to evaluate requisite pilot proficiency. Respondents lack a reasonable basis for representations with respect to such pilot skill and experience, and have failed to disclose that the representations made are not based upon actual flight experience sufficient to evaluate requisite pilot proficiency. Therefore, the acts and practices described in Paragraph Twenty-Two are unfair and deceptive.

PAR. 23. In the further course and conduct of their business, respondents have represented that money deposited or paid for the BD-5D aircraft would be used, directly or indirectly, for further research and development necessary to perfect certain subassemblies of such aircraft.

In truth and in fact, significant amounts of money deposited or paid by buyers of the BD-5D aircraft has been diverted by respondents to research and development with respect to other of respondents products, as well as other uses, not related to development of the BD-5D aircraft, under circumstances in which substantial research and development of the BD-5D aircraft was necessary before production of such aircraft could begin. Therefore, the acts and practices described in Paragraph Twenty-Three are deceptive.

PAR. 24. In the further course and conduct of their business, respondents have represented that the BD-5D aircraft has been certified or otherwise approved by the FAA.

In truth and in fact, BD-5D aircraft has never been certified or otherwise approved by the FAA. Therefore, the acts and practices described in in Paragraph Twenty-Four are deceptive.

PAR. 25. These aforesaid false, misleading and deceptive representations which have been made by respondents, have the tendency or

capacity to mislead a substantial number of consumers, and to induce said consumers to purchase substantial quantities of products from respondents and respondents' licensees or franchisees based upon tendency or capacity to mislead.

PAR. 26. In the further course and conduct of their business, respondents have promised, otherwise obligated themselves to refund deposits or payments made by respondents' customers on the BD-5D aircraft, if actual production of such aircraft is not commenced by a date specified in the purchase contract, orally, or otherwise; respondents have concurrently agreed or otherwise obligated themselves to promptly issue refunds should production not commence on the specified date.

Respondents have consistently failed to issue properly requested refunds. Respondents have engaged in numerous practices designed to deceive customers as to the customer's actual right to a refund, the circumstances under which refunds will be made, and the date on which the refund will be made. Respondents have further engaged in practices designed to coerce customers into acquiescing to refund delay. Respondents have received numerous legitimate refund requests which have gone unsatisfied for in excess of three years.

By so obligating themselves to issue refunds and then failing to issue such refunds in a prompt manner and by engaging in the above-enumerated practices designed to delay and resist issuance of properly requested refunds, respondents have engaged in unfair acts and practices.

PAR. 27. In the further course and conduct of their business, respondents have had the use and benefit of substantial amounts of money received as advance payments and deposits, and retained, as a result of the unfair and deceptive acts as set forth in Count Three, herein.

Respondents have failed to pay interest upon money received as a result of such unfair acts and practices.

By so retaining money received, and by so failing to pay interest, respondents have engaged in unfair acts and practices.

PAR. 28. The aforementioned acts and practices, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Bede Aircraft, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with a principal office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent Bede General Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with a principal office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent Bede Wing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with a principal office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent James R. Bede is sole stockholder and an officer and director of respondents Bede Aircraft, Inc. and Bede General

Corporation. He is also a stockholder, officer and director of respondent Bede Wing, Inc.

Respondent James R. Bede formulates, directs and controls the acts and practices of respondents Bede Aircraft, Inc., Bede General Corporation and Bede Wing, Inc.

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

ORDER

For purposes of this order, the following definitions apply:

The phrase "advance payment or deposit" means a payment or deposit tendered to respondents in connection with the order or sale of any product, under circumstances in which shipment to the buyer will not take place on the same day on which such payment or deposit is tendered;

"authorized official" includes the person appointed as "authorized official" and, consistent with the duties as defined in Section XVII of this order, the person appointed as "substitute authorized official;"

"BD-5 homebuilt aircraft" means any aircraft materially within the design parameters of the single-seat, single-engine aircraft commonly referred to by respondents as the "BD-5," which is advertised for sale or sold for full or partial assembly from a kit or from parts, materials or plans supplied wholly or partially by respondents;

"BD-5D aircraft" means any aircraft materially within the design parameters of the single-seat, single-engine aircraft commonly referred to by respondents as the "BD-5," which is advertised for sale or sold as a production aircraft (as the word "production" is defined herein);

"BD-7 aircraft" means any aircraft materially within the design parameters of the two to four place, low-wing aircraft commonly referred to by respondents as the "BD-7;"

"the company," when appearing in parentheses in the text of any notice or disclosure contained in this order, means that when such notice or disclosure is actually implemented as required by this order, the name of the company giving the notice or disclosure shall be inserted in lieu thereof;

"drop ship order" means an order placed by respondents with some entity other than respondents or respondents' agents, dealers, licensees or franchisees, for the shipment of merchandise directly to respondents' customer;

"FAA" means the Federal Aviation Administration, an agency of the United States Government;

"FmHA loan" means the guaranteed or insured loan applied for by respondents through the Business and Industrial Loan Division of the Farmers Home Administration, United States Department of Agriculture, to be used for funding respondents' production facility in Petersburg, Virginia.

"production" means, in describing any product, that such product is commercially manufactured or fabricated in significant numbers for ultimate distribution or sale in the usual course of business, as opposed to being manufactured or fabricated in small numbers as a model or prototype, or for limited distribution or use not in the usual course of trade;

"proper refund request" means a written notification reasonably calculated to put the refundor on notice that the refundee wishes to exercise a present or future right to a refund. In the latter instance, the refund request becomes "proper" when the right to refund actually vests;

"ship, shipping or shipment" refer to the act by which merchandise is physically placed in possession of the carrier, or if there is no carrier, in possession of the buyer or his agent; or in the case of aircraft, transfer of the FAA title certificate;

"specialized tools, machines or processes" means tools or machines which a homebuilder of average ability and resources would not reasonably be expected to own, or in the case of processes, those which such homebuilder would not be reasonably expected to be capable of personally performing.

"the trustee" means the trustee of the stock of Bede Aircraft, Inc., appointed pursuant to the provisions of this order;

"Xenoah engine" means a 726 cubic centimeter displacement aircraft engine manufactured by Xenoah Company of Japan, and certified by the FAA for aircraft use.

I

It is ordered. That respondents Bede Aircraft, Inc., a corporation, Bede General Corporation, a corporation, Bede Wing, Inc., a corporation, their successors and assigns, and officers and directors; James R. Bede, individually and as an officer and stockholder of said corporations (hereinafter sometimes referred to collectively as "respondents"); and respondents' officers, directors, agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, or through any dealer, licensee or franchisee, in connection with the advertising,

offering for sale, sale, or distribution of homebuilt aircraft kits, production aircraft, aircraft parts and accessories, or any other product or merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting the accuracy, truthfulness or completeness of any financial statement;

(2) Disseminating for any purpose inaccurate, untrue, or deceptively incomplete financial statements;

(3) Disseminating for any purpose financial statements not prepared in accordance with generally accepted accounting standards, unless such statements clearly and conspicuously indicate the particular manner in which they are at variance with generally accepted accounting standards;

(4) Disseminating financial statements for any purpose, until a full and complete independent audit of the books of Bede Aircraft, Inc. is accomplished, and complete financial statements are procured by respondents as a result thereof; *provided, however*, that unaudited financial statements may be used to provide a sophisticated lender or investor such as a bank or governmental agency with interim or in-house financial statements, for the purpose of providing such lender the most current information available;

(5) Disseminating financial statements, for any reason, which are not consistent with the results of the independent audit described in paragraph 4, above;

(6) Misrepresenting the existence, business purpose, financial condition, or probability of successful operation of any business enterprise with which any of respondents is associated;

(7) Representing that a corporation in any way associated with respondents exists, or representing that any such corporation is engaged in business in any way, unless concurrent with such representations there is compliance with all applicable federal, state, and local laws and rules, sufficient to establish the legal existence of such corporation as well as its right and ability to lawfully engage in business;

(8) Failing at any time to provide any business entity with which any of respondents may be associated in an ownership, partnership, joint venture, or other managerial or directorial capacity, with the financial as well as other attributes implied by respondents' representations, as well as with the attributes and requirements imposed by law.

II

It is further ordered, That respondents and respondents' officers, directors, agents, representatives, salesmen, and employees, directly or through any corporation, subsidiary, division, or other device, or through any dealer, licensee or franchisee, in connection with the advertising, offering for sale, sale, or distribution of homebuilt aircraft kits, production aircraft, aircraft parts and accessories, or any other product or merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

(1) Representing that any product is available for immediate shipment unless such product exists within respondents' possession or control in quantity sufficient to meet reasonably anticipated demand, ready for immediate shipment consistent with the representation made;

(2) Failing to disclose, when such is in fact the case, that any product is not available for immediate delivery, is not being manufactured as a production product, or is subject to further research and development, or failing to disclose any other facts bearing materially upon respondents' current or prospective ability to deliver such product;

(3) Making any representations regarding the shipping dates or shipping schedules with respect to any product unless prior to making such representations respondents have a reasonable basis therefor; *provided further,* that the data constituting such reasonable basis must be documented and retained by respondents for inspection by the staff of the Commission for a period of three years after such representation is made;

(4) Misrepresenting performance criteria or characteristics of any product or making any representations with respect to the performance criteria or characteristics of any product without a documented reasonable basis therefor; *provided further,* that the data constituting such reasonable basis must be documented and retained by respondents for inspection by the staff of the Commission for a period of three years after such representation is made;

(5) Making any representations, orally or in writing, regarding performance criteria or characteristics with respect to any product that is not a "production" product as defined herein, unless concurrently with such representations the following notice is disclosed in a clear and conspicuous manner:

THE (name of product) IS SUBJECT TO FURTHER TESTING AND DEVELOP-

MENT; DESIGN AND PERFORMANCE MAY CHANGE AS FURTHER DEVELOPMENT TAKES PLACE.

(6) Representing that any aircraft or component thereof has been certified or otherwise approved by the FAA, unless such certification or approval has in fact been granted, and unless such representations are consistent with the certification or approval granted;

(7) Failing to honor the purchase price set forth in any contract for the purchase of respondents' products except under circumstances where such failure is necessitated by factors outside respondents' control and where the purchase contract provides adequate notice of such circumstances and their possible effects.

(8) Making any representations with respect to the requisite pilot experience and skill necessary to fly any production aircraft manufactured, advertised for sale, or sold by respondents, unless respondents' representations are consistent with the Type Certification issued by the FAA (as "Type Certificate" is defined by FAA regulations), as well as any limitations imposed by the FAA upon the operation of such aircraft;

(9) Making any representations with respect to the requisite pilot experience and skill necessary to fly any aircraft intended to be assembled from a kit, or any aircraft intended to be a production aircraft but not certified for production by the FAA, unless there exists a reasonable basis for such representation; *provided further*, that the data establishing such reasonable basis must be documented and retained by respondents for inspection by the staff of the Commission, for a period of three years after any such representation is made;

(10) Misrepresenting the pilot skill necessary to fly any aircraft.

(11) Misrepresenting the number of work hours necessary for the assembly of any kit;

(12) Representing that any device is capable of assembly from a kit, within any range or specific amount of time, unless prior to such representation respondents possess a reasonable basis therefor: (a) consisting of representative data obtained from the actual experience of builders of the kit who could be considered average in terms of their experience and accessibility to tools and technical assistance; or (b) if such data is unavailable due to the insufficiency of builders or builder experience, consisting of other data; *provided further*, that the data establishing such reasonable basis must be documented and retained by respondents for inspection by the staff of the Commission, for a period of three years after any such representation is made;

(13) Misrepresenting the number or description of any tools necessary for the assembly of any kit;

(14) Making any representations with respect to the tools or processes necessary for the assembly of any kit, without disclosure of all specialized tools, machines or processes which must be employed to assemble the kit in accordance with respondents' representations and specifications;

III

It is further ordered. That respondents and respondents' officers, directors, agents, representatives, salesmen, and employees, directly or through any corporation, subsidiary, division, or other device, or through any dealer, licensee or franchisee, in connection with the advertising, offering for sale, sale, or distribution of homebuilt aircraft kits, production aircraft, aircraft parts and accessories, or any other product or merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from soliciting or accepting advance payments or deposits in excess of \$100:

(1) unless a purchase contract relating to such an advance payment or deposit:

(a) contains the following notice displayed clearly and conspicuously on the front of the contract document;

NOTICE TO BUYER: THE FEDERAL TRADE COMMISSION'S
RULE REGARDING MAIL ORDER MERCHANDISE MAY
CREATE CERTAIN RIGHTS FOR YOU, AS WELL AS DUTIES
ON THE PART OF THE SELLER. READ THIS ENTIRE
CONTRACT.

(b) recites verbatim in a clear and conspicuous manner, the provisions attached to this order as Appendix I; and

(2) unless respondents comply with the contractual provisions required by subparagraph 1(b), above, in all material respects.

IV

It is further ordered. That respondents do forthwith cease and desist from soliciting or accepting advance payments or deposits on products valued in excess of \$100 and not within respondents' immediate possession or control, and on products valued in excess of \$1,000.

(1) unless such advance payments or deposits are held in escrow by a bank or other duly chartered institution capable of acting in a fiduciary capacity as an escrow agent and

(2) unless such escrow arrangement is conducted pursuant to an escrow agreement between respondents and the escrow agent, meeting the specifications set forth in Section VI, herein.

V

It is further ordered, That respondents and respondents' officers, directors, agents, representatives, salesmen, and employees, directly or through any corporation, subsidiary, division, or other device, or through any dealer, licensee or franchisee, in connection with the advertising, offering for sale, sale, or distribution of homebuilt aircraft kits, production aircraft, aircraft parts and accessories, or any other product or merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from advertising for sale, selling, or otherwise soliciting the purchase of plans or drawings for the assembly or construction of any aircraft or other device:

(1) unless a written contract for the sale of such plans or drawings exists, and contains, in a clear and conspicuous manner on the first page thereof, the following disclosure:

(the company) MAKES NO CLAIMS OR PROMISES EXCEPT THOSE CONTRACTUALLY SPECIFIED, AS TO THE FUTURE AVAILABILITY OF ANY PARTS OR MATERIALS NECESSARY TO ASSEMBLE THIS *(product)*. THEREFORE, THE BUYER SHOULD BE AWARE THAT THE FUTURE ABILITY TO PURCHASE SUCH PARTS OR MATERIALS FROM *(the company)* MAY NOT BE GUARANTEED.

(2) unless all information kits and other packages of promotional materials relating to such plans or drawings contain, in a clear and conspicuous manner, the disclosure specified in subparagraph (1), above; and,

(3) unless such plans or drawings contain the following disclosure made clearly and conspicuously on the first page thereof:

(the company) MAKES NO CLAIMS OR PROMISES EXCEPT THOSE CONTRACTUALLY SPECIFIED, AS TO THE FUTURE AVAILABILITY OF ANY PARTS OR MATERIALS NECESSARY TO ASSEMBLE THIS *(product)*.

VI

It is further ordered, That respondents, within 60 days after the order becomes final, enter into an escrow agreement with a bank or

other duly chartered financial institution capable of acting in a fiduciary capacity as an escrow agent; *provided further*, that:

(1) Respondents may, with the approval of the trustee, enter into multiple escrow arrangements one each for separate business sites, under circumstances judged by the trustee to be in the best interests of respondents' timely compliance with this order.

(2) Such escrow agreement(s) shall be consistent with the provisions and spirit of this order as well as the specifications set forth below:

(a) Where the provisions of this order require, advance payments or deposits received by respondents shall be immediately transferred to an escrow agent for deposit in an escrow account; such payments or deposits shall be accompanied by a copy of the applicable sales contract;

(b) The escrow agent shall hold funds so deposited, in an escrow account dedicated solely to the escrow agreement; the escrow agent shall disburse funds from the escrow account only under the following circumstances:

(i) If an authorized official provided for in Section XVII of this order, certifies that respondents are rightfully entitled to payment, the escrow agent will be bound to remit to the respondent the proper amount representing merchandise shipped; *provided, however*, such certification shall consist of (1) a statement of the facts entitling respondents to receipt of escrowed amounts, (2) copies of shipping documents or other documents evidencing shipment as defined in this order, or copies of documents evidencing the placement of a drop ship order requiring payment to be made concurrently with the order, and (3) a statement that to the authorized official's best personal knowledge respondents are rightfully entitled to receipt of escrowed funds and respondents' receipt of such funds will be consistent with this order;

(ii) If the buyer identified in a contract accompanying the advance payment or deposit makes written demand on the escrow agent for refund of payments or deposits held in the escrow account, the escrow agent shall be obligated to immediately notify respondent of such demand; at the end of 14 days after such notice to respondent, if respondent has not certified, through an authorized official, that the buyer making the demand is not entitled to a refund, the escrow agent shall be obligated to remit the amount of the refund demanded, up to the face value of the contract relating to such advance payment or deposit;

(c) The escrow account shall not be liable in any way for the expenses and fees of the escrow agent;

(d) The escrow agent shall maintain for the inspection of the Commission and the trustee, appropriate books, accounts and files documenting all transactions occurring under the escrow agreement, including but not limited to the original copy of each certification by respondents that funds should or should not be released from the escrow account; *provided further*, that such books, accounts and files for each calendar year, shall be retained by the escrow agent for inspection by the trustee or the Commission, for a period of two additional calendar years;

(e) Where the provisions of this order require certification or action by an authorized official or his substitute, the escrow agent shall accept the certification of no other person in lieu thereof, except that of the trustee that the escrow agent shall accept only the statement of the trustee of Bede Aircraft, Inc., as to the identity of such authorized officials.

VII

It is further ordered, That to the extent respondents are obligated to provide refunds for any reason, respondents cause such refunds to be issued within fifteen working days after the right to a refund vests, except as otherwise provided herein.

VIII

It is further ordered, That respondents, to the extent that refunds are not issued within fifteen days after the right to a refund vests, add interest to the refund at an annualized rate of two points over the highest of the prime interest rates offered by large New York banks as posted in the Wall Street Journal at the beginning of each calendar quarter during which such refund is overdue.

IX

It is further ordered, That respondents discharge the customer obligations of Bede Aircraft, Inc., and its subsidiaries in the following manner:

(1) with respect to all persons who have made advance payments or deposits of any amount on the BD-5D aircraft, respondents shall offer the following options:

(a) such persons may elect to receive subject to the provisions of Sections XIII and XIV of this order, a refund of the advance payment or deposit, plus interest from August 1, 1975 or the contract date, whichever is later, until such refund plus accumulated interest is paid in cash or used as credit for the purchase of merchandise;

provided further, that such interest shall be calculated at an annualized rate of two points over the highest of the prime interest rates offered by large New York banks as posted in the Wall Street Journal at the beginning of each calendar quarter for which interest is paid; OR

(b) such persons may elect to reaffirm the order and purchase the aircraft at the wholesale price, which shall be the lowest price at which any of respondents' dealers could or did purchase from respondents such an aircraft in the regular course of business during the 90 days prior to the time full payment is made for purchase of the aircraft.

(c) such election shall be made at the time respondents require execution of the final purchase contract committing the buyer to purchase and respondents to deliver the aircraft, but in no event shall respondents require such election more than six months prior to the production date for the first production BD-5D aircraft scheduled by Creative Industries of Detroit or a substitute subcontractor;

(d) *provided further*, that such persons entitled to make an election under subparagraph (1), above, shall be deemed to have elected option (a) thereof unless option (b) is affirmatively elected in writing.

(2) with respect to all persons who have made advance payments or deposits toward the purchase of, or purchased BD-5 homebuilt aircraft kits as of the date this order becomes final, respondents shall offer the following options:

(a) such persons may elect to reaffirm their orders and receive interest, paid subject to the provisions of Sections XIII and XIV of this order; *provided further*, that such interest shall be calculated in accord with the provisions of subparagraphs (c) through (g), below, and that such interest shall be paid only to those persons who have paid at least the basic purchase price of the complete kit as set forth in the original purchase contract or to their successor(s) in interest;
OR

(b) such persons may elect to rescind the purchase contract or contracts applicable to the purchase of BD-5 parts, materials, plans or accessories, and receive a full refund for all parts, materials, plans and accessories returned to respondents in an undamaged and unmodified condition; *provided, however*, that persons who have, as of the date of this order becomes final, been shipped all parts, materials and plans specified in the purchase contract, shall not be eligible for rescission under this subparagraph; *provided further*, that credit for items returned shall be administered in accord with the provisions of subparagraphs (h) through (m), below;

(c) interest provided for in subparagraph (2)(a), above, shall be calculated at a rate of 5% *per annum* of the amount paid or deposited; *provided further*, that such interest shall be calculated from the date on which the owner of the kit took title, until the date on which all parts, plans and materials have been shipped in fulfillment of the contract;

(d) the interest provided for in subparagraph (2)(a), above, shall not exceed \$250 with respect to any contract with an original BD-5 aircraft priority number lower than priority number 2501; *provided further*, that interest with respect to all other contracts shall not exceed \$150 per contract;

(e) in complying with the provisions of subparagraphs (2)(a) and (2)(d), above, with respect to contracts with a BD-5 aircraft priority number lower than priority number 2501, respondents may require waiver of any rights the recipient of interest may have under the previously stated commitment of Bede Aircraft, Inc. to provide interest as referred to in the "Confidential BD-5 Customer Newsletter" dated March 6, 1972;

(f) the interest provided for in subparagraph (2)(a), above, shall be paid in cash or credit, at the recipient's option;

(g) the interest provided for in subparagraph (2)(a), above, shall inure only to the benefit of the owner of the aircraft or aircraft kit as of the date this order becomes final.

(h) rescission pursuant to subparagraph (2)(b), above, shall be administered as follows: parts, materials, plans or accessories returned pursuant to such subparagraph shall be judged unacceptable for refund only upon the written finding of an authorized official that the items sought to be returned for refund have been modified or damaged to such an extent as to be unusable for the purpose for which they were intended; *provided further*, that in the event of a dispute involving in excess of \$100, the matter shall be submitted to the trustee, who shall in his discretion make a final decision; if the subject of the dispute is \$100 or less, the decision of the authorized official shall be final; *provided, however*, that the decision of the authorized official as well as the trustee shall be subject to the ongoing compliance review of the Commission;

(i) items returned pursuant to subparagraph (2)(b), above, shall be shipped to respondents, freight paid, with responsibility for packaging and insurance, and risk of loss resting with the sender until the shipment comes within respondents' possession or control; *provided further*, that respondents shall credit the person rescinding, with an amount of additional refund equal to the amount which would be paid by a shipper under the appropriate Interstate Commerce

Commission tariffs for shipment of the parts, materials, plans and accessories judged acceptable for refund from the point from which rescinding person did ship such parts, materials, plans and accessories; *provided further*, such shipping credit shall be given regardless of the manner in which the rescinding party actually effected shipment;

(j) respondents shall credit the person rescinding, with a refund representing the *pro rata* contract value of the parts, plans, materials and accessories judged acceptable for return pursuant to subparagraphs (2)(h), above;

(k) respondents shall credit the account of the person rescinding, with interest from 60 days after this order becomes final until the rescission refund and accumulated interest is paid in its entirety; *provided further*, that such interest shall be calculated at an annual rate of 6% *per annum* of the total rescission refund, including the allowance for shipping;

(l) respondents shall, at least six times over a period of 18 months after the last election of rescission becomes irrevocable, provide free of charge in a mail circulation to all then-current BD-5 homebuilders, as well as in an insert in any BD-5 information kit or package of promotional materials, a reasonable opportunity for all persons electing rescission to advertise or provide notice of their desire to sell or trade any item of value connected with the assembly of the BD-5 aircraft; respondents shall provide to persons electing rescission, at the time such rescission is elected, instructions explaining how such persons may avail themselves of this advertising service;

(m) no sooner than 60 days, and no later than 6 months after this order becomes final, respondents shall, by certified mail, notify all persons electing rescission under subparagraph (2)(b), above, of a return date within 30 days of such notice, after which respondents will process return of parts, materials plans and accessories which are the subject of the rescission; *provided further*, that if a person electing rescission has not shipped such parts, plans, materials or accessories to respondents within 60 days of the return date specified in respondents' notice, such person may be deemed by respondents to have waived the right of rescission under this order and elected interest under subparagraph (2)(a), above;

(n) such persons as are entitled to make an election under subparagraph (2) of this section will be deemed to have elected option (a) unless and until option (b) is elected in writing;

(o) the election of option (b) must take place, if at all, within 60 days after this order becomes final; however, respondents may demand an earlier election in cases where respondents are ready and

willing to make shipment of further kit packages, or back-ordered items, the contract value of which shipment is in excess of \$100;

(p) the election of option (a) may not be revoked at any time beyond 60 days after this order becomes final, or after respondents have shipped parts, materials or plans pursuant to an election demanded under (o), above;

(q) the election of option (b) may be revoked at any time prior to the return of parts, materials or plans to respondents for refund; *provided further*, that where option (b) is so revoked, the resulting election of option (a) shall be treated as if made *ab initio*.

(3) With respect to all persons who have made advance payments or deposits toward the purchase of, or have purchased BD-7 homebuilt aircraft kits as of date this order becomes final, respondents shall offer the following options:

(a) such persons may elect to reaffirm their orders and receive interest, paid in the form of cash or credit at the recipient's option subject to the provisions of Sections XIII and XIV of this order; *provided further*, that such interest shall be calculated in accord with the provisions of subparagraph (c), below; or

(b) such persons may elect to rescind the purchase contract(s) applicable to the purchase of BD-7 parts, materials, plans or accessories, and receive a full refund for all parts, materials, plans or accessories returned to respondents in an undamaged and unmodified condition; *provided, however*, that credit for items so returned shall be administered in accord with the provisions of subparagraphs (d) through (i), below;

(c) the interest provided for in subparagraph (3)(a), above, shall be calculated at a rate of 5% *per annum* of the purchase contract price of each of kit packages 1A, 2, 3, 4 and 5, or the purchase contract price of each of such kit package as was actually purchased, whichever is less; *provided further*, that such interest shall be calculated with respect to each kit package individually, from the date upon which the owner as of the date this order becomes final took title or paid for purchase of such kit package, whichever was later, until the date on which shipment of all elements of each such package is complete in all material respects; *provided further*, that prior to the date this order becomes final, absence of wing spars from package 1A shall not render that package incomplete for the purpose of determining such package's eligibility for calculation of interest;

(d) rescission pursuant to subparagraph (2)(b), above, shall be administered as follows: parts, materials, plans or accessories returned pursuant to such subparagraph shall be judged unacceptable for refund only upon the written finding of an authorized

official that the items sought to be returned for refund have been modified or damaged to such an extent as to be unusable for the purpose for which they were intended; *provided further*, that in the event of a dispute involving in excess of \$100, the matter shall be submitted to the trustee, who shall in his discretion make a final decision; if the subject of the dispute is \$100 or less, the decision of the authorized official shall be final; *provided, however*, that the decision of the authorized official as well as the trustee shall be subject to the ongoing compliance review of the Commission;

(e) items returned pursuant to subparagraph (2)(b), above, shall be shipped to respondents, freight paid, with responsibility for packaging and insurance, and risk of loss resting with the sender until the shipment comes within respondents' possession or control; *provided further*, that respondents shall credit the person rescinding, with an amount of additional refund equal to the amount which would be paid by a shipper under the appropriate Interstate Commerce Commission tariffs for shipment of the parts, materials, plans and accessories judged acceptable for refund from the point from which rescinding person did ship such parts, materials, plans and accessories; *provided further*, such shipping credit shall be given regardless of the manner in which the rescinding party actually effected shipment;

(f) respondents shall credit the person rescinding, with a refund representing the *pro rata* contract value of the parts, plans, materials and accessories judged acceptable for return pursuant to subparagraphs (2)(h), above;

(g) respondents shall credit the account of the person rescinding, with interest from 60 days after this order becomes final until the rescission refund and accumulated interest is paid in its entirety; *provided further*, that such interest shall be calculated at an annual rate of 6% *per annum* of the total rescission refund, including the allowance for shipping;

(h) respondents shall, at least six times over a period of 18 months after the last election of rescission becomes irrevocable, provide free of charge in a mail circulation to all then-current BD-7 homebuilders, as well as in an insert in any BD-7 information kit or package of promotional materials, a reasonable opportunity for all persons electing rescission to advertise or provide notice of their desire to sell or trade any item of value connected with the assembly of the BD-7 aircraft; respondents shall provide to persons electing rescission, at the time such rescission is elected, instructions explaining how such persons may avail themselves of this advertising service;

(i) no sooner than 60 days, and no later than 6 months after this

order becomes final, respondents shall, by certified mail, notify all persons electing rescission under subparagraph (2)(b), above, of a return date within 30 days of such notice, after which respondents will process return of parts, materials, plans and accessories which are the subject of the rescission; *provided further*, that if a person electing rescission has not shipped such parts, plans, materials or accessories to respondents within 60 days of the return date specified in respondents' notice, such person may be deemed by respondents to have waived the right of rescission under this order and elected interest under subparagraph (2)(a), above;

(j) such persons as are entitled to make an election under subparagraph (3) of this section will be deemed to have elected option (a) unless and until option (b) is elected in writing;

(k) the election of option (b) must take place, if at all, within 60 days after this order becomes final; however, respondents may demand an earlier election in cases where respondents are ready and willing to make shipment of further kit packages, or back-ordered items, the contract value of which shipment is in excess of \$100;

(l) the election of option (a) may not be revoked at any time beyond 60 days after this order becomes final, or after respondents have shipped parts, materials or plans pursuant to an election demanded under (k), above;

(m) the election of option (b) may be revoked at any time prior to the return of parts, materials or plans to respondents for refund.

X

It is further ordered, That respondents ship or make a *bona fide* offer to ship all parts, materials, plans and other products, excluding products covered by Section IX, subparagraph (1), of this order, which have been contracted for shipment but not shipped as of the date this order becomes final, within twelve months after this order becomes final or twelve months after the proposed FmHA loan to respondents is funded, whichever is later, but in any event within twenty-four months after this order becomes final.

XI

It is further ordered, That respondents adopt the following procedures with respect to the shipment of engines to the owners of BD-5 homebuilt aircraft or aircraft kits as of the date this order become final:

(1) Such owners of BD-5 homebuilt aircraft or aircraft kits as have contracted with respondents and paid for purchase of an engine

described in such contract as 726 cubic centimeters displacement or larger, shall be given a *bona fide* offer to purchase the Xenoah engine, one per aircraft, at one of the following prices, whichever is less:

(a) the price contracted for as of the date this order becomes final, if such contract was for a Xenoah engine described as 726 cubic centimeters displacement or larger; OR

(b) the sum of the actual cost of the engine FOB the U.S. port of entry, plus 30%, or respondents' wholesale price for such engine, whichever is less;

(2) Such owners of BD-5 aircraft or aircraft kits as are not included within the provisions of subparagraph (1), above, shall be given a *bona fide* offer to purchase the Xenoah engine, one per aircraft, at the following price:

respondents' wholesale price for such engine, but not more than the sum of the actual cost of the engine FOB the U.S. port of entry, plus 35%;

(3) except as required for shipment of BD-5D aircraft to persons who have, as of the date this order becomes final, paid or deposited money against the purchase of such aircraft, respondents shall not ship Xenoah engines, or cause such engines to be shipped, to any persons other than owners of BD-5 homebuilt aircraft or aircraft kits as of the date this order becomes final, until each of such owners has purchased or been given a *bona fide* offer to purchase such engine.

XII

It is further ordered, That respondents ship or make a *bona fide* offer to ship to all owners of BD-5 homebuilt aircraft or aircraft kits as of the date this order becomes final, parts, plans and materials for fabrication of the BD-5 drive assembly described in respondents' letter to "BD-5 Homebuilders" dated March 31, 1975, subject to the following provisions:

(1) Such parts, plans and materials shall include fully fabricated and formed "shivs" and "overriding clutch;" *provided futher,* that such shivs and overriding clutch shall be equivalent in all technical and mechanical respects to those used in the FAA certified drive assembly for the BD-5D aircraft;

(2) Such parts, plans and materials shall be offered at no extra charge to all such owners of BD-5 homebuilt aircraft or aircraft kits who have not ordered and received, as of the date this order becomes final, all parts, plans and materials necessary for complete assembly and installation of the drive assembly referred to by respondents as the "variable speed drive;"

(3) To the extent that any person eligible to receive such offer has previously paid to or deposited with respondents any amount against the purchase of any drive system or assembly, respondents shall allow full credit for such amount previously paid or deposited, which shall be redeemable in credit or cash at the recipient's option, subject to the provisions of Section XIV of this order.

XIII

It is further ordered. That subject to loan repayment requirements imposed upon respondents by *bona fide* lenders recognized as such by the trustee, respondents assign the highest possible business priority allowed by sound business prudence to the shipment of BD-5D aircraft as provided for in Section IX, subparagraph (1)(b), of this order, and to the shipment of parts, plans and materials as provided for in Sections X, XI and XII of this order; *provided further*, that respondents shall assign business priority subordinate only to that stated above, to the payment of interest and refunds provided for in this order; in any event, respondents shall neither cause nor allow business profits of any corporate respondent to be reinvested beyond those amounts reasonably necessary to ensure the survival of such corporate respondent and promote the timely fulfillment of respondents' obligations under this order; further, respondents shall neither cause nor allow, dividends to be paid, except from subsidiary to parent, on behalf of the stock of Bede Aircraft, Inc., or its subsidiaries, until such time as the trustee shall certify that all of respondents' obligations under Sections IX, X, XI and XII of this order have been discharged.

XIV

It is further ordered. That respondents administer the payment of interest, refunds, and credits, as well as rescission, provided for in Sections IX and XII of this order according to the following provisions:

(1) as funds become available as provided for in Section XIII of this order, an authorized official shall distribute such funds, or inventory purchased with such funds, to the claimants thereof in the most equitable manner possible;

(2) respondents shall, within 90 days after this Order becomes final, but before any distribution of such funds, file with the Commission a plan for distribution; *provided further*, that such plan shall not be implemented until the Commission has notified respondents of its approval thereof.

(3) such distribution plan shall include, *inter alia*, provision for notification of eligible consumers of their rights under this order, and provision for the equitable distribution of funds through shipment of parts, plans and materials, payment of interest and refunds, and allowance of consumers' use of preexisting credits for the purchase of merchandise.

(4) Such distribution plan shall also include respondents' plan or formula for determining the exact refund value of all parts, materials, plans and accessories returned pursuant to rescission under Section IX of this order.

XV

It is further ordered, That respondents not ship BD-5D aircraft to any person not having paid or deposited money against the purchase thereof as of the date this order becomes final, until respondents have shipped or made a *bona fide* offer to ship such aircraft to all persons who have, as of the date this order becomes final, paid or deposited money against the purchase of such aircraft; *provided further*, that respondents shall ship or make a *bona fide* offer to ship BD-5D aircraft strictly on a FIFO schedule, based upon the date on which the contract accompanying the initial payment or deposit against the purchase of the aircraft was executed; *provided further*, that "persons" who have paid or deposited money as required above, shall include the successor(s) in interest to such persons.

XVI

It is further ordered, That respondents undertake the appointment of a trustee who shall hold in trust all outstanding stock of respondent Bede Aircraft, Inc; *provided further*, that such trust arrangement shall be managed as follows:

(1) the instrument creating such trust and providing its terms shall be the document entitled "Security Trust" (hereinafter "the trust agreement"), attached to this order as Appendix II, and made a part hereof;

(2) the grantors of such trust shall be all persons owning or holding stock of any nature in respondent Bede Aircraft, Inc.; such grantors shall upon execution of the trust agreement transfer all right, title, and interest in such stock to the trustee, to be held according to the terms and conditions of the trust agreement.

(3) the trust shall be irrevocable, and shall terminate only upon the occurrence of the termination date as defined by the trust agreement.

(4) the trustee shall be qualified and appointed as follows:

(a) the trustee shall be a natural person, experienced as a fiduciary, with substantial business experience and background, possessing a reputation in his community for high ethical character; *in the alternative*, the trustee may be a corporate entity, duly chartered by a public authority and capable of acting as a trustee consistent with the terms of this order;

(b) the first qualified trustee, as well as successor trustees, shall be appointed by a delegate of the grantors, which delegate shall not be a respondent named in this order, and a delegate of the Commission; *provided further*, that if such delegates cannot agree, they shall together appoint a third; a majority of the three shall then select a trustee who shall serve until the termination date of the trust or such time as he shall die, resign, become incapacitated, insolvent, or bankrupt, or be removed as provided in the trust agreement;

(5) respondents shall provide all reasonable cooperation and assistance to the trustee in his exercise of the duties specified in this order;

(6) breach of the trust agreement may be deemed by the Commission a violation of the order by respondent Bede Aircraft, Inc.

XVII

It is further ordered, That respondents provide for the appointment by the trustee of one "authorized official" and one "substitute authorized official" for each of Bede Aircraft, Inc., and its subsidiaries; *provided further*, that:

(1) The trustee may, at his discretion, appoint authorized officials and substitutes for separate business sites used by the parent or its subsidiaries, under circumstances judged by the trustee to be in the best interests of respondents' timely compliance with this order;

(2) Respondents shall defer entirely to the trustee's choices for the appointed authorized officials and substitutes;

(3) Respondents shall provide all reasonable authority, as well as cooperation and assistance, to each authorized official as he exercises the duties specified in this order;

(4) Wherever this order specifies duties to be discharged by an authorized official, the substitute authorized official shall act in, and only in, the absence or incapacity of the authorized official;

(5) In the absence or incapacity of the authorized official, for a period exceeding 14 consecutive calendar days, excluding vacation time or annual leave, respondents shall notify the trustee of such

circumstances and assist the trustee in taking whatever steps he deems necessary under the circumstances;

XVIII

It is further ordered, That respondents make available through written notice, financial statements based upon the independent audit described in Section I, paragraph 4 hereof, to all persons who have extended credit or who are considering extension of credit to respondents, and to federal, state and local government agencies, to whom any financial information purporting to express the financial status or condition of Bede Aircraft, Inc. has been given during calendar years 1976, 1977, and 1978, provided that such persons or agencies agree to maintain the confidentiality of such information in a manner consistent with confidentiality attached to the information previously given such person or agency;

XIX

It is further ordered, That respondents mail to each person to whom the provisions of Section IX hereof apply, the Commission's synopsis of this order in addition to instructions for obtaining a copy of this order from the Commission; *provided further,* that the Commission shall supply copies of such synopsis, and that such synopsis and instructions shall be mailed within 15 days after this order becomes final or within 15 days after respondents receive copies of the synopsis, whichever is later.

XX

It is further ordered, That respondents incorporate verbatim the following provision in all dealership contracts between respondents and respondents' dealers, whether such contracts are in effect as of the date this order becomes final or are executed thereafter:

Dealer agrees to be bound by and observe all applicable provisions of the Order of the Federal Trade Commission issued ———, applicable to the Company. Dealer further agrees that the Company shall have the right to terminate this agreement upon written notice that the Company has determined that the dealer has engaged in an act or practice prohibited by such Order;

XXI

It is further ordered, That respondents send a copy of this decision and order, to each of their present or future employees, salesmen,

dealers, franchisees, licensees and others who sell or promote the sale of respondents' products, and, as to each such person:

(1) Provide them with a form returnable to the respondents and the Commission, upon which they may clearly state their intention to be bound by and conform to the requirements of this order;

(2) Inform them that respondents will not employ any person, or use the services of any person, to sell or promote the sale of any product unless such person agrees to and does file notice with the respondents and the Commission that he or she will be bound by the provisions of this order;

(3) Inform them that respondents are obligated by this order to discontinue dealing with those persons who continue the unfair or deceptive acts or practices prohibited by this order, or who fail to adhere to the affirmative requirements of this order;

(4) Institute a program of continuing surveillance adequate to reveal whether their business operations conform to the requirements of this order;

(5) Promptly discontinue dealing with dealers, or using the services of such persons, including dealers, who:

(a) do not file notice with the respondents and Commission of their intent to comply with, and be bound by, this order;

(b) are revealed by the aforesaid program of surveillance or by any other means to have engaged in an unfair or deceptive act or practice prohibited by this order, or to have failed to adhere to the affirmative requirements of this order.

XXII

It is further ordered, That respondents notify the Commission at least thirty days prior to any 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 which may affect compliance with obligations arising out of this order.

XXIII

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, such respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's

business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

XXIV

It is further ordered, That the provisions of this order shall not operate to abridge or modify any of respondents' obligations arising under the Commission's Trade Regulation Rule with respect to Mail Order Merchandise, 16 CFR 435.

XXV

It is further ordered, That respondents may require as a condition precedent of the receipt of interest or rescission refund under Section IX of this order, that a person receiving same shall agree that such interest as has actually been paid by respondents in the form of cash or through the person's use of credit, be considered partial or complete satisfaction, on a dollar for dollar basis, of any judgment obtained by such person against respondents for breach of the underlying purchase contract if the court awarding the judgment so approves.

XXVI

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 I

(the company), hereinafter "the seller," agrees that this transaction shall conform to the provisions of the Federal Trade Commission's Trade Regulation Rule Concerning Mail Order Merchandise, 16 C.F.R. 435, hereinafter "the Rule," regardless of the manner in which the merchandise involved was ordered from seller, whether through the mails or otherwise. Seller agrees that the buyer(s) identified in this contract shall have the right under this contract to enforce the provisions of the Rule as if such provisions were incorporated verbatim in the contract. Seller further agrees that any act or practice on the part of seller in connection with this transaction, which would be a violation of the Rule, shall be a breach of this contract.

The following summary of the Rule is included as a guide to the buyer:

SUMMARY

You have the right to know when you can expect your merchandise to be

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shipped. If no specific shipping date is stated by the seller in the contract or somewhere else, you have the right to have your merchandise shipped to you within 30 days. If the seller does not ship your merchandise within the stated time or within 30 days, you have the right to cancel your order.

If the seller can't ship the merchandise to you in the stated time or within 30 days, he must give you the chance to cancel your order and get all of your money back. The seller must notify you of a delay and give you a free means to reply (for example, a postage-paid postcard).

If the shipping delay is 30 days or less, you have the right to cancel the order and get your money back, the right to agree to a new shipping date, or the right not to answer. But if you don't answer, the seller can assume you agree to the shipping delay. If the shipping delay is more than 30 days, you must give your express consent to the delay, otherwise, the seller must return your money at the end of the first 30 days of delay.

If you cancel, you have the right to get all of your money back. The seller must mail your refund to you within seven business days after you cancel your purchase. Where there is a credit sale, the seller has one billing cycle to "adjust" your account.

This summary is an outline of your rights as the buyer. If you need to know more details, a copy of the Federal Trade Commission's Rule Concerning Mail Order Merchandise may be obtained from:

Federal Trade Commission

Office of the Secretary

Distribution and Duplication Branch

Washington, D.C. 20580

APPENDIX II

SECURITY TRUST

THIS Indenture of Trust made as of the _____ day of _____, 19 ____, by and between the shareholders of Bede Aircraft, Inc. listed in the attached Schedule A, hereinafter referred to as "the grantors," and _____, hereinafter referred to as "the trustee."

WHEREAS, it has been suggested by the Federal Trade Commission, hereinafter referred to as "the Commission," that Bede Aircraft, Inc., hereinafter referred to as "the Company," may have utilized certain undesirable trade practices;

WHEREAS, the grantors, the Company, and the Commission have discussed these allegations and determined that the Company should adopt certain procedures, hereinafter referred to as "the new procedures and policies;"

WHEREAS, the representatives of the scheduled shareholders, the Company, and the Commission have reduced the new procedures and policies to a writing which takes the form of a consent order, hereinafter referred to as "the Order;" and

WHEREAS, the Order contemplates that it will be policed to the extent provided for herein by the independent trustee provided for herein;

NOW THEREFORE, it is agreed that the trustee shall hold the shares of the

Company scheduled in the attached Schedule B, hereinafter referred to as "the scheduled property," IN TRUST according to the terms and conditions hereinafter set forth, for the benefit of the Company and the grantors.

FIRST: In this Indenture the following terms shall have the following meanings where the context so permits:

(1) The term "Company" shall mean the aforesaid Bede Aircraft, Inc., its subsidiaries, Bede General Corporation, Bede Wing, Inc., and all corporations or other business enterprises owned or controlled by the aforesaid Corporation and/or Jame R. Bede;

(2) The term "scheduled property" shall mean the original property listed in Schedule B, all additions to it, and any and all property received by the trustee as a result of his serving as trustee of the trust;

SECOND: The term of this trust shall commence with the date first written above and it shall continue until the occurrence of the first of the following events:

(1) Satisfaction of all of respondents' obligations arising under Sections IX, X, XI and XII of the Order, provided further, that this trust shall not terminate under the provisions of this subparagraph until delivery to the Commission of the joint certification of the trustee and the Company that:

(a) All the Company's customers existent as of the date first written above have received from the Company all products which the Company is obligated to deliver to them as of the date first written above and/or all monies which the Company is obligated to pay them as of the date first written above;

(b) All orders placed with the Company after the day before the date first written above have been substantially filled or dealt with as prescribed by the order; and

(c) The order and this trust have succeeded in bringing the Company to a position where it is able to meet its commitments to its customers without necessitating the continuance of this trust;

(2) The arrival of the last day of existence permitted by the applicable Rule Against Perpetuities; provided further, that the measuring lives governing such rule shall be that of James R. Bede, William R. Bernard, and Kenneth R. Bennington.

The date on which shall occur the first of the above described events shall be known as "the termination date."

THIRD: Upon the occurrence of the termination date, this trust shall terminate and the trustee shall have no further responsibilities other than the delivery of the scheduled property to the grantors or their successors or personal representatives, and the delivery to the Commission of the following:

(1) All outstanding reports due the Commission under the terms of this trust;

(2) A statement setting forth:

(a) The reasons for the trustee's belief that the termination date has occurred, and

(b) His opinion as to whether the Company, its subsidiaries, and/or affiliates have substantially complied with the Order, and if not, why not.

FOURTH: During the continuance of this trust, the trustee shall have the following responsibilities with respect to the scheduled property:

(1) He shall hold the scheduled property in a safe deposit box rented in his name as trustee, or if this is not practicable, in some other place suitable for the safekeeping of the scheduled property;

(2) He shall deliver the scheduled property to anyone who is approved by the Company, the grantors, and the trustee for any purpose approved by all, including but not limited to mergers, consolidations, or other business

reorganization deemed by all to be beneficial or not detrimental to the interests of the grantors and the Company's customers;

(3) He shall deliver the scheduled property as directed by a court of competent jurisdiction under the federal Bankruptcy Act.

FIFTH: During the continuance of this trust, the trustee shall have the obligation to exercise the voting rights associated with and belonging to the scheduled property; however, his discretion with respect to the exercise of such rights shall be limited as follows:

(1) With respect to the election of directors, he shall exercise such voting rights as instructed by the grantors except that:

(a) no more than a majority of directors shall be subject to the prior approval of the grantors, provided further, that in the event that the trustee causes the removal and replacement of a director pursuant to subparagraphs (b) through (d), below, the replacement director shall not be subject to the prior approval of the grantors unless the director so removed was subject to such prior approval.

(b) in the event that he believes that the Company is not complying with the spirit as well as the letter of this Order, he will cause the immediate removal of all directors who are consciously or negligently allowing such non-compliance, and replace them with directors of his choice;

(c) in the event he believes that the Company is not providing him with the information and cooperation he requires to meet his responsibilities under this Indenture of Trust, he will cause the immediate removal of all directors who are consciously or negligently allowing such circumstances to exist, and replace them with directors of his choice;

(d) in the event he believes that officers and directors of the Company receive compensation for their services not reasonably reflecting their duties and value to the Company, as well as the realities of the Company's financial condition and obligations, he will cause the removal of directors who are consciously or negligently allowing such circumstance to exist, and replace them with directors of his choice.

(2) With respect to all other matters requiring shareholders' action, and in particular major corporate actions and reorganizations requiring shareholders' approval, except those arising under the federal Bankruptcy Act, the trustee shall vote against all changes in the status quo unless he has the approval of the grantors;

(3) With respect to matters arising under the federal Bankruptcy Act and requiring shareholders' action, the trustee shall independently exercise such voting rights consistent with his duties under the provisions of subparagraph (4) below;

(4) With respect to all matters requiring or allowing the trustee to exercise rights associated with and belonging to the scheduled property, the trustee shall exercise such rights consistent with his general duties as a fiduciary, given the following limitations and instructions:

(a) He must always exercise such rights in a manner calculated to bring about and preserve the Company's compliance with the Order;

(b) He must always exercise such rights in pursuit of the early termination of this trust as provided for in subparagraph (1) of paragraph SECOND of this Indenture of Trust;

(c) He must always exercise such rights so that if, within his discretion as fiduciary, no other reasonable alternative exists for the successful operation of the Company consistent with the spirit of these limitations and instruc-

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tions, he will cause the Company to voluntarily avail itself of any and all appropriate provisions of the federal Bankruptcy Act.

SIXTH: During the continuance of the trust, the trustee shall have the following responsibilities with respect to the business and the operation of the Company:

(1) The trustee shall require quarterly financial reports from the Company; such reports shall be rendered by an independent certified public accountant, and shall include:

- (a) a profit and loss statement for the preceding quarter and for the year to date;
- (b) a balance sheet as of the date of the profit and loss statement;
- (c) a sources and applications of funds statement for the year as of the date of the profit and loss statement;

(2) The trustee shall demand yearly audited financial reports from the Company, consisting of the same components as he must require of the Company quarterly;

(3) Quarterly during the first year of the life of this trust, and twice each year thereafter, the trustee shall have the Company's compliance with the escrow provisions of the Order audited by an independent certified public accountant of his choice. Based upon such audit as well as such other examination as the trustee may deem necessary, the trustee shall compile a written report setting forth his findings with respect to the Company's compliance with the escrow provisions of the Order;

(4) The trustee shall file with the Commission, immediately upon his receipt thereof, copies of all reports specified in subparagraphs (1) and (2), above;

(5) The trustee shall file with the Commission copies of the audit report and trustee's report resulting from the provisions of subparagraphs (3), above, within 60 days after the close of the period which is the subject of the audit;

(6) Upon receipt of the reports specified in subparagraphs (1), (2) and (3), above, the trustee shall review them. If he finds any indications that the Company is not complying with the Order, he shall forthwith make such inquiries as he shall deem necessary to determine whether compliance exists. The trustee shall notify the Commission of his findings in writing and take such steps as are within his powers to assure compliance with the Order.

(7) The trustee shall appoint one "authorized official" and one "substitute authorized official" for each of Bede Aircraft, Inc. and its subsidiaries; provided however, that such authorized official or substitute shall not be an individual respondent named in this order; provided further, that the trustee may, at his discretion, appoint authorized officials and substitutes for separate business sites used by the parent or its subsidiaries, under circumstances judged by the trustee to be in the best interest of respondents' timely compliance with this Order;

(7) In the event of absence or incapacity of an authorized official and his substitute, the trustee shall act in lieu thereof, until such time as the authorized official or his substitute can resume duties, or another is appointed;

(8) Should the trustee learn of the absence or incapacity of an authorized official for a period in excess of 14 calendar days, excluding vacation time, the trustee shall examine such circumstances and determine whether as a matter of his discretion a new authorized official should be appointed; in any event should such absence or incapacity extend to 30 calendar days, the trustee shall appoint a new authorized official, and if necessary a new substitute;

(9) The trustee shall maintain close communication with the authorized officials appointed by him, ascertaining the satisfactory discharge of the authorized officials' duties under the Order, as well as respondents' compliance with this

Order. The trustee shall also, from time to time, demand such reports from the authorized officials as the trustee deems necessary.

(10) The trustee shall take all steps as are within his powers to ensure the company's compliance with the spirit as well as the letter of Section XIII of the Order.

SEVENTH: During the continuance of this trust, the trustee shall have the authority to remove the Company's directors and replace such directors with directors of his choice who will cause the Company to pay the trustee such reasonable fees from the Company's funds as the trustee, the grantors, and the Company shall agree. Such remuneration shall be the amount specified in the attached Schedule C, hereinafter referred to as "the consulting agreement." In no event shall the trustee's compensation be determined by profits or any other measure of the Company's business success. The grantors hereby agree to forfeit any right to object to the use of the Company's funds for purposes of the trustee's remuneration.

EIGHTH: The trustee shall not be liable for breach of trust in connection with the good faith exercise of any discretionary power granted herein. He shall be so liable only for those actions taken by him which are deliberate or negligent breaches of his fiduciary duties and for breaches which occur because the trustee intended to profit improperly from the action or inaction giving rise to the breach. Breach of this trust by the trustee may be deemed by the Commission a violation of the Order by the Company.

NINTH: The Company shall indemnify the trustee for any liabilities which he might incur as a result of serving as trustee under this Indenture, unless such liability arises as a result of a breach of fiduciary duty on the part of the trustee which occurs because the trustee intended to profit improperly from the action or inaction giving rise to the breach.

TENTH: The trustee shall serve until the termination date or until such time as he shall die, resign, become incapacitated, insolvent, or bankrupt, or be removed as hereinafter provided:

- (1) If a trustee fails to qualify, or ceases to qualify or act, or is removed, a successor trustee shall be appointed as provided for in section XVI of the Order;
- (2) A majority of the grantors may remove a trustee for cause if they notify the Commission at least 21 days in advance of the proposed effective date of such removal, and if they also:
 - (a) Notify the Trustee at least 21 days in advance of the proposed effective date of such removal;
 - (b) Describe with particularity in such notice to the trustee and to the Commission, the circumstances giving rise to cause for the trustee's removal;

Once such notice is given by the grantors, the trustee shall continue to serve until such time as removal becomes effective or a successor is qualified and elected, whichever is later. Upon the last day of the trustee's service, the grantors shall tender to the trustee a certified check for an amount equal to all compensation due him.

ELEVENTH: The trustee may resign by delivering in writing to the grantors and to the Commission a notice which states:

- (1) The desired effective date of his resignation;
- (2) The reasons for his resignation;
- (3) A statement of his opinion as to whether or not the Company is complying with the Order; and
- (4) A final bill for his services.

In any event, such resignation shall not be effective until his successor is qualified and elected.

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TWELFTH: the terms of this trust shall be governed by and construed under the laws of the state in which respondent Bede Aircraft, Inc. maintains its principal place of business.

THIRTEENTH: During the continuance of this trust the trustee shall make available, or cause to be made available for copying and inspection by the Commission and its staff, all books and records of the Company, as well as all books and records of the trustee arising from this trust.

GRANTORS

JAMES R. BEDE (date)

**JAMES R. BEDE, TRUSTEE FOR THE
BENEFIT OF James M. Bede, Laura
J. Bede, Nancy A. Bede, and Jeffrey
A. Bede.**

Approved and ratified by Bede Aircraft, Incorporated by a resolution of its Board of Directors on the —— day of ——, 1977.

CHAIRMAN OF THE BOARD (date)

**SECRETARY OF THE CORPORATION
(date)**

TRUSTEE (date)