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

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

IN THE MATTER OF

WINN-DIXIE STORES, INC.

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

Docket C-1110. Modified Order, June 24, 1968-Modified Order, Sept. 10, 1975

Order modifying an earlier order dated Sept. 14, 1966, 70 F.T.C. 611, 31 F.R. 13080, modified June 24, 1968, 73 F.T.C. 1056, 33 F.R. 10205, pursuant to order of the United States District Court for the Middle District of Florida, 377 F.Supp. 733, 9 S.&D. 1016, by requiring prior Commission approval of food store acquisitions by respondent only in those States or subdivisions where respondent presently operates such stores or departments.

Appearances

For the Commission: *Mary L. Azcuenaga* and *William M. Sexton.*

For the respondent: *J. Shepard Bryan, Jr.*, Jacksonville, Fla., *Collier, Shannon, Rill & Edwards*, Wash., D.C.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

The Federal Trade Commission, having issued a consent order herein on Sept. 14, 1966, and having modified said consent order on June 24, 1968, and the United States District Court for the Middle District of Florida having enjoined the Commission from failing to reopen the consent order proceeding for the purpose of modifying the order in accordance with the order entered by the Commission against the Kroger Company in F.T.C. Docket No. C-2067; now therefore,

It is ordered, That this matter be, and it hereby is, reopened.

It is further ordered That the order issued in this matter on Sept. 14,

1966, as modified on June 24, 1968, be, and it hereby is, modified to read as follows:

It is ordered, That:

(A) For a period of ten (10) years from Sept. 14, 1966, to the extent specified in subparagraphs (B) and (C) below, Winn-Dixie Stores, Inc., shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry No. 5411, Standard Industrial Classification Manual, 1967 revision, or a grocery department in a nonfood store), where such acquisition involves:

(1) Five (5) or more grocery stores or grocery departments in nonfood stores, or

(2) Annual grocery store or grocery department sales of more than five million dollars ($5,000,000), or

(3) Combined (Winn-Dixie and the grocery stores or grocery departments to be merged or acquired) grocery store or grocery department sales of more than five percent (5%) of total grocery or food store sales in any city or county in the United States.

(B) The prohibition contained in subparagraph (A) shall apply to any merger or acquisition of grocery stores or grocery departments in nonfood stores located in the following described areas of the United States: The States of Alabama, Florida, Georgia, Kentucky, North Carolina and South Carolina; that portion of the State of Tennessee east of the 86th meridian; that portion of the Commonwealth of Virginia west of the 78th meridian and south of the 38th parallel; the Parish of Concordia in the State of Louisiana and the counties of Adams, Lincoln, Pike and Forrest in the State of Mississippi and those portions of the States of Louisiana and Mississippi south of the 31st parallel; and that portion of Mississippi east of the 89th meridian; and that portion of the State of Indiana south of the 39th parallel.

(C) The prohibition contained in subparagraph (A) shall also apply to any merger or acquisition of grocery stores or grocery departments in nonfood stores located in any city or county in those portions of the United States not described in subparagraph (B), if Winn-Dixie is then operating any grocery stores or grocery departments in nonfood stores in such city or county.

(D) For a period of ten (10) years from Sept. 14, 1966, Winn-Dixie shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store or grocery department in a nonfood store for which prior approval is not required pursuant to subparagraphs (A)-(C) without providing sixty (60) days' prior notification to the Commission, or, when the time schedule does

not permit such notification, without providing a letter to the Commission within ten (10) days after the agreement or understanding in principle is reached, stating that the time schedule does not permit sixty (60) days' prior notification and setting forth the reasons why such prior notification cannot be made; *Provided, however,* That for mergers or acquisitions involving not more than four (4) grocery stores or grocery departments in nonfood stores and representing annual grocery store or grocery department sales of not more than five million dollars ($5,000,000), notification to the Commission shall be provided within thirty (30) days following the consummation of such merger or acquisition.

It is further ordered, That within (30) days from the effective date of this Order, and annually thereafter until it has fully complied with this order, Winn-Dixie Stores, Inc., shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each person having authority to approve grocery store acquisitions and mergers.

IN THE MATTER OF

NORTH AMERICAN POOLS, INC., ET AL.

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

Docket C-2724. Complaint, Sept. 10, 1975-Decision, Sept. 10, 1975

Consent order requiring a Totowa, N.J., seller, distributor and installer of swimming pools, among other things to cease using unfair and deceptive sales practices including misrepresenting the availability of merchandise; misrepresenting prices; disparaging advertised products; misrepresenting guarantees and product durability.

Appearances

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

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

PARAGRAPH 1. Respondent North American Pools, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 547 Union Blvd., Totowa, N.J.

Respondent John Maione is an individual and is an officer of North American Pools, Inc. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His home address is 253 Fifth St., Palisades Park, N.J.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools and swimming pool accessories.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, the aforementioned swimming pools and swimming pool accessories, when sold, to be shipped from the places of business of their supplier located in the United States to purchasers thereof located in States other than the State from which such shipments originate.

There is now, and has been, at all times mentioned herein a substantial and continuous course of trade in said swimming pools and swimming pool accessories in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers of general interstate circulation, and by advertisements transmitted over television stations located in some States of the United States having sufficient power to carry such broadcasts across State lines, and by oral statements and representations made by respondents, their representatives, agents or employees with respect to the nature and limitations of their offers, their prices, their purchases, savings, and the quality of their products.

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

THIS IS IT * * * THIS IS WHAT OWNING YOUR OWN FAMILY POOL IS ALL ABOUT * * * NO BEACH CROWDS, NO TRAFFIC * * * JUST FUN IN THE SUN AND FAMILY TOGETHERNESS. OUR COMPLETE LINE INCLUDES THE

DELUXE LEISURE MATE AND THIS YEAR, IN ADDITION, WE CAN MAKE THIS SPECIAL OFFER * * * THIS 31 FOOT OVAL POOL AND DECK, EXACTLY AS SHOWN IS ONLY $789 INCLUDING INSTALLATION. THERE ARE NO EXTRAS * * * THE PRICE OF $789 INCLUDES POOL, PATIO DECK, FILTER, LADDER AND FENCING. SOUNDS UNBELIEVABLE? CALL RIGHT NOW AND LET ONE OF OUR POOL EXPERTS PROVE IT. THERE IS NO OBLIGATION.


SWIMMING POOL
SALE!
HUGE 16'x24'
OUTSIDE DIMENSIONS
INCLUDES DECK & FENCE
WATER AREA 15 x 24 x 3 FEET
539.00
COMPLETELY INSTALLED
CALL! COMPARE!
EASY TERMS
ARRANGED
EXCLUSIVE FEATURES
• Huge 4" Top Rails
• Heavy gauge steel sidewalls
• Exclusive "Lock-Frame" construction
• Heavy Duty Bottom Rail Foundation
• Heavy gauge solid vinyl liner
• Safety Lock-up and In-Pool Aluminum Ladders
• Advanced over-the-wall Skimmer
• Cartridge Filtration Unit
THE GREATEST SWIMMING VALUE FOR YOUR MONEY IN A FANTASTIC COMBINATION THAT WAITS YOU TO RELAX!
BEAUTY • QUALITY • DURABILITY • SAFETY
Here there is a custom-crafted pool designed for the family budget as well as for their swimming needs. But don't let the low, low price fool you . . . Included in this fabulous pool package is a handsome 4' x 15' patio deck, big enough for sunning and lounging plus many of the quality features and all of the safety features found in larger sized pools.
CALL DIRECT • CALL COLLECT
OPEN 7 DAYS - 24 HOURS
• NEW JERSEY
881-7100 656-8700
• NEW YORK
or 667-3600
NORTH AMERICAN POOLS, INC.
567 UNION BOULEVARD, TOTOWA, NEW JERSEY 07512

* * * Unconditionally guaranteed for 10 years * * * Swimming Pools are maintenance Free * * * Usual Selling Price * * * excess of $4000 * * * Reduced Prices * * * use of Pools as models or demonstrators.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, respondents have represented and are now representing, directly or by implication, that:

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

2. Their advertised offers of a swimming pool for $489, $589 or $789 is a special or sale price and respondents' purchasers or potential purchasers are being offered a price for said pool which would effect a savings amounting to the difference between the special or sale price and some higher price at which such pool is usually and customarily sold.

3. Swimming pools sold by respondents are maintenance free.

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

5. Certain swimming pools sold by respondents are usually sold at prices higher than those offered to potential purchasers and therefore respondents' purchasers are being offered a special or bargain price for said pools which would effect a savings amounting to the difference between the usual and customary price and the price at which the pools are being sold.

6. After the installation of their pool is completed, some purchasers who permit their pools to be used for demonstration and advertising purposes by respondents in selling pools to other persons would receive an allowance or reduction in price.

PAR. 6. In truth and in fact:

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

2. The advertised swimming pools are not being offered for sale at special or reduced prices and savings are not thereby afforded to purchasers from respondents' usual and customary selling price.

3. The swimming pools sold by respondents are not maintenance free.

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

5. Certain swimming pools sold by respondents have not usually been sold at prices higher than those offered to potential purchasers. Respondents use the stated higher price to mislead potential purchasers into the belief that they are receiving a special or discount price. Respondents do not have a usual and customary selling price for these pools and the prices at which these pools are sold is often substantially below the stated price and varies from purchaser to purchaser depending upon the resistance of the particular purchaser.

6. After the installation of the swimming pool sold by respondents is completed, the purchaser's pool will not, in most instances, be used for demonstration or advertising purposes by respondents. As a result of allowing, or agreeing to allow their pools to be used as demonstrators or models, purchasers are not granted reduced prices or allowances.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program to induce the purchase of their swimming pools and swimming pool accessories, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six above, respondents or their salesmen or representatives have induced purchasers to sign contracts upon initial contact by not giving the purchaser sufficient time to carefully consider the purchase and consequences thereof.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements were and are true and into the purchase of substantial quantities of respondents' swimming pools and swimming pool accessories by reason of said erroneous and mistaken belief.

PAR. 9. In the course and conduct of their business, and at all times

mentioned herein, respondents have been in substantial competition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of swimming pools and other products of the same general kind and nature as sold by respondents.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent North American Pools, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 547 Union Blvd., Totowa, N.J.

Respondent John Maione is an individual and is an officer of said corporation. He formulates, directs and controls the acts and practices

of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, North American Pools, Inc., a corporation, its successors and assigns, and its officers, and John Maione, individually and as an officer of the aforesaid corporation and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of swimming pools or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering for sale any products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondents maintain an adequate and readily available stock of said products.

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

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

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

5. Representing, directly or by implication, that any price for a swimming pool or other product or service sold by respondents is a special, preseason or sale price, when such price does not constitute a significant reduction from an established selling price at which such swimming pool, product or service has been sold in substantial quantities by respondents in the recent, regular course of business.

6. Representing, in any manner, that the swimming pools or any other products sold by respondents are maintenance free or require no periodic servicing or inspection.

7. Representing, directly or indirectly, that any of the respondents' products, installations or services are warranted or guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously

disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

8. Representing that by purchasing any merchandise, purchasers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale at retail in good faith for a reasonably substantial period of time in the recent, regular course of business.

9. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of any merchandise sold or offered for sale by respondents.

10. Representing, directly or indirectly, that any price is reduced from respondents' former price if records customarily maintained by respondents fail to establish that such price constitutes a significant reduction from the price at which such merchandise has sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

11. Misrepresenting, directly or indirectly, that the pool of any of respondents' purchasers or prospective purchasers will be used for any type of advertising, demonstration or model or that as a result of such use, respondents' purchasers or prospective purchasers will be granted reduced prices or will receive a discount on the purchase price of said pool.

12. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

13. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face

type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION
(enter date of transaction)

(Date)

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

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

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

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

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

I HEREBY CANCEL THIS TRANSACTION.

(Date) (Buyer's signature)

14. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

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

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

17. Misrepresenting in any manner the buyer's right to cancel.

18. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

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

20. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by Federal law or the law of the State in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the State in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

It is further ordered, That in any advertisement for swimming pools, respondents shall disclose the material composition of the major structural components of said swimming pool including pool walls, deck, supporting members, rails and liner. Where print advertisements are utilized by respondents, said disclosures shall be set forth in a type size sufficient to clearly and conspicuously disclose the material composition of the said components to a potential purchaser. Where a pool requires periodic painting to preserve or protect wooden components thereof, respondents shall clearly and conspicuously set forth said fact in type of the same size used to list the material composition of major structural components of said swimming pools.

It is further ordered, That respondents maintain records, to be furnished upon request of the Federal Trade Commission or its staff, which disclose the factual basis for any representations or statements made with respect to any prohibition or affirmative disclosure requirement of this order, including, but not limited to, a copy of each advertisement in which a swimming pool is offered for sale at a

specified price, the volume of sales of such advertised pool at the advertised price and the name and address of each purchaser of such advertised pool.

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

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

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

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

TONY EVANS MOTORS, INC., ET AL.

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

Docket C-2725. Complaint, Sept. 10, 1975–Decision, Sept. 10, 1975

Consent order requiring a Reno, Nev., mobile home dealer, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Jerome M. Steiner, Jr.*
For the respondents: *Wayne N. Capurro*, Reno, Nev.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tony Evans Motors, Inc., a corporation, doing business as Tony Evans Mobile Home Show, Capital Mobile Home Show, Mobile Home Show, and Repo Information Center, and Anthony P. Evans, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tony Evans Motors, Inc. is a corporation organized, existing, and doing business under and by the virtue of the laws of the State of Nevada, with its principal office and place of business located at 3290 Kietzke Lane, Reno, Nev.

Individual respondent Anthony P. Evans is an officer of the corporate respondent. He formulates, directs and controls the policy, acts and practices of the corporation, including the acts 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 advertising and sale to the public of mobile homes and furniture and accessories designed for use in mobile homes.

PAR. 3. In the ordinary course of their business as aforesaid, respondents regularly arrange for and offer to arrange for the extension of consumer credit as "consumer credit" and "arrange for the extension of credit" are 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 of their business as aforesaid, have published and broadcast and are causing to be published and broadcast advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents:

1. State the rate of finance charge without describing that rate as the "annual percentage rate," in violation of Section 226.10(d)(1) of Regulation Z.

2. State the amount of the downpayment required or that no downpayment is required and/or the amount of the monthly installment payments which can be arranged in connection with a consumer credit transaction, without, in all cases, also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(i) The cash price;

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

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

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

(v) The deferred payment price.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated 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 and the Truth in Lending Act and the implementing regulation promulgated thereunder; 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 Tony Evans Motors, Inc., doing business as Tony Evans Mobile Home Show, Capital Mobile Home Show, Mobile Home Show, and Repo Information Center, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business and office located at 3290 Kietzke Lane, Reno, Nev.

Individual respondent Anthony P. Evans is the principal officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his business address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Tony Evans Motors, Inc., a corporation, doing business as Tony Evans Mobile Home Show, Capital Mobile Home Show, Mobile Home Show, and Repo Information Center, or by any other name, and its successors and assigns, and its officers, and Anthony P. Evans, 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 any extension or arrangement for the

extension of consumer credit, or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Stating, in any advertising, the rate of any finance charge without stating the rate of that charge expressed as an "annual percentage rate," as required by Section 226.10(d)(1) of Regulation Z.

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

(a) the cash price;

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

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

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

(e) the deferred payment price.

3. Failing, in any advertisement, to make all disclosures, determined in accordance with Section 226.4 and 226.5 of Regulation Z, at the time and in the manner, form and amount prescribed by Section 226.10 of Regulation Z.

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 consummation of any sale or extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, to aid, promote, or assist any extension of consumer credit, 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, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

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

business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents 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

ORLANDO OF CALABRIA, INC., ETC., ET AL.

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

Docket C-2726. Complaint, Sept. 15, 1975-Decision, Sept. 15, 1975

Consent order requiring a Bronx, N.Y., promoter of a hair implant system, among other things to cease misrepresenting the nature, appearance and other related characteristics of its system; and failing to disclose that their system involves surgical procedures and continually requires special care. Further, respondents are required to devote 15 percent of all of their advertisements to warning prospective customers of the inherent dangers associated with their system of hair implant replacement.

Appearances

For the Commission: *Lester G. Grey.*
For the respondents: *Pro se.*

COMPLAINT

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

PARAGRAPH 1. Respondent Orlando of Calabria, Inc., trading also as Orlando of Italy, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its

principal office and place of business located at 2 W. Fordham Road, Bronx, N.Y.

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

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

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across State lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondent has maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and caused to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

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

Our new medical process gives you a full head of permanent hair.
Permanence and the completely natural look.
You can really shampoo, swim, dive, ski, etc.
So natural a procedure that your friends will think you are growing new hair.
You can participate in all activities!
Your new hair looks, feels, and functions like your own.
* * * Can be restyled easily with a pocket comb.
* * * It won't come off.

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning but not expressly set out herein, and by oral statements and representations made by employees and agents of

the respondents, respondents have represented, directly or by implication, that:

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

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

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

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

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

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

PAR. 6. In truth and in fact:

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

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

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

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

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

caused by common actions, such as rolling the head on a pillow during sleep.

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

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

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

(a) that clients may experience discomfort and pain as a result of the surgical procedure, from the synthetic sutures themselves, and from pulling normally incident to wearing the hairpiece;

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

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

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to rejection of the synthetic sutures through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of the system,

respondents entice members of the purchasing public to their salon with advertisements of "a permanent head of hair that will not come off" as a solution to baldness and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their salon. When members of the purchasing public have visited the salon, they have been subjected to emotional sales pressure, for the purpose of persuading them to sign a contract for the application of the implant system, and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the synthetic suture in the scalp. Persons are insistently urged to sign such contracts and make such down payments, through the use of persistent and emotionally forceful sales presentations employing the following tactics, among others:

1. Representing that the psychological benefit of having hair replaced is so significant as to be of immediate necessity and that, subconsciously, bald men are desperate for prompt relief.

2. Inducing prospects to sign contracts and/or make down payments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the synthetic suture being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are false and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, and to unfairly influence consumers to hurriedly and precipitately sign contracts for the application of the implant hair replacement system, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations

involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the synthetic suture in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Orlando of Calabria, Inc., trading also as Orlando of Italy, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 2 W. Fordham Rd., Bronx, N.Y.

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

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

ORDER

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

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

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

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

b. it may be cared for like natural hair where care involves possible pulling on the hair;

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

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

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

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

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

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

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

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

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

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

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

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

1. Respondents shall clearly and conspicuously disclose, orally prior

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

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

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

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

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

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

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the

terms of this order; *Provided*, That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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

It is further understood that nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

HAIR REPLACEMENT CENTERS OF FLUSHING, INC., ETC., ET AL.

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

Docket C-2727. Complaint, Sept. 15, 1975-Decision, Sept. 15, 1975

Consent order requiring a Flushing, N.Y., promoter of a hair implant system, among other things to cease misrepresenting the nature, appearance and other related characteristics of its system; and failing to disclose that their system involves surgical procedures and continually requires special care. Further respondents are required to devote 15 percent of all of their advertisements to warning prospective customers of the inherent dangers associated with their system of hair implant replacement.

Appearances

For the Commission: *Lester G. Grey.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hair Replacement Centers of Flushing, Inc., a corporation, trading also as American Hair Design Centers, and Jan Felson, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hair Replacement Centers of Flushing, Inc., trading also as American Hair Design Centers, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 33-21 Francis Lewis Blvd., Flushing, N.Y.

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

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

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation, and by classified telephone directories which are distributed across State lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such directory, newspaper advertising, and literature mailing, respondent has maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such directory, newspaper

advertising and mailing of promotional literature, have disseminated and caused to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

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

IT IS A PATENTED TECHNIQUE OF PERMANENTLY IMPLANTING HAIR TO THE SCALP USED EXCLUSIVELY BY HAIR REPLACEMENT CENTERS.

* * * MEDICAL IMPLANTS DO NOT REQUIRE PERIODIC ADJUSTMENTS.

CAN A HAIR IMPLANT BE DETECTED? NO, BECAUSE IT IS PERFECTLY MATCHED TO YOUR HAIR, REGARDLESS OF COLOR, TEXTURE AND TYPE.

YOU CAN SWIM, SHAMPOO, SKI OR PARTICIPATE IN ALL SPORTS WITHOUT FEAR OF EMBARRASSMENT.

* * * LESS THAN IF YOU OWNED TOUPEES.

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

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

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

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

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

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

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

PAR. 6. In truth and in fact:

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

2. The hairpiece applied does not become part of the anatomy like natural hair. The system involves the suturing of synthetic threads into the scalp of the recipient by a surgical procedure and which may be

rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

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

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

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

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

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

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

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

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

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

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

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to rejection of the synthetic sutures through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of the system, respondents entice members of the purchasing public to their salon with advertisements of "It is a patented technique of permanently implanting hair to the scalp used exclusively by Hair Replacement Centers." as a solution to baldness and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their salon. When members of the purchasing public have visited the salon, they have been subjected to emotional sales pressure, for the purpose of persuading them to sign a contract for the application of the implant system, and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the synthetic suture in the scalp. Persons are insistently urged to sign such contracts and make such down payments, through the use of persistent and emotionally forceful sales presentations employing the following tactics, among others:

1. Representing that the psychological benefit of having hair replaced is so significant as to be of immediate necessity and that, subconsciously, bald men are desperate for prompt relief.

2. Inducing prospects to sign contracts and/or make down payments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the synthetic suture being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are false and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, and to unfairly influence consumers to hurriedly and precipitately sign contracts for the application of the implant hair replacement system, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the synthetic suture in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Hair Replacement Centers of Flushing, Inc., trading also as American Hair Design Centers, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 33-21 Francis Lewis Blvd., Flushing, N.Y. 11358.

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

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

ORDER

It is ordered, That respondent Hair Replacement Centers of Flushing, Inc., a corporation, trading also as American Hair Design Centers, and/or under any other name or names, its successors and assigns and its officers, and Jan Felson, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device or through franchisees or licensees, in connection with the advertising, offering for sale, sale, or distribution of the implant replacement system or other hair replacement product or process involving surgery (hereinafter sometimes referred to as the "system"),

in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

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

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

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

b. it may be cared for like natural hair where care involves possible pulling on the hair;

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

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

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

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

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

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

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

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

217-184 O - 76 - 42

may substitute the following statement, in lieu of the above requirements:

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

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

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

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

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

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

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

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, serve a copy of this order upon each present and every future licensee or

franchisee, and upon each physician participating in application of respondents' system, and obtain written acknowledgment of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing, (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this order. Respondents shall retain such acknowledgments and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' system.

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

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

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

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

It is further understood that nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Order Sept. 16, 1975

Denial of respondents' joint application for review of administrative law judge's order of July 15, 1975, denying their joint motion to nullify his order of June 19, 1975, granting complaint counsel's application for taking of depositions. Administrative law judge directed, after consultation with parties, promptly to establish schedule for trial with certification to Commission of report on status of matter in 30 days.

Appearances

For the Commission: *Catherine A. Winer, Anthony L. Joseph, David M. Malone, Lawrence B. Bernard, Edward M. Shumsky, Richard F. Silvestri, Noel W. Kane* and *Robert W. Doyle, Jr.*

For the respondents: *Edwin Rockefeller, Bierbower & Rockefeller,* Wash., D.C., *A.R. Connelly* and *Robert D. Jaffe, Cravath, Swaine & Moore,* New York City, for Kellogg Company. *Edward F. Howrey, David Murchison* and *Ralph Savarese, Howrey, Simon, Baker & Murchison,* Wash., D.C., *R.R. Heer* and *J.F. Finn, C.L. Whitehill & J.J. Jenko,* Minneapolis, Minn., *Robert L. Fulgency,* Minneapolis, Minn., for General Mills. *R. MacCrate* and *Jeffrey I. Zuckerman, Sullivan & Cromwell,* New York City, *Clifford, Warnke, Glass, McIlwain & Finney,* Wash., D.C., *Peter J. DeLuca* and *Bruce L. Bozeman,* White Plains, N.Y. for General Foods. *L.C. McKinney, Mark M. Fefatwole* and *Peter Sonderby, Chadwell, Kayser, Ruggles, McGee & Hastings,* Chicago, Ill., and *Barnett P. Ruttenberg,* Chicago, Ill., for Quaker Oats. *J. Robert O'Brian,* Battle Creek, Mich.

ORDER DENYING JOINT APPLICATION FOR REVIEW

The administrative law judge, by order dated July 15, 1975, denied respondents' joint motion to nullify his order of June 19, 1975, granting

complaint counsel's application for the taking of depositions. On July 25, 1975, the Commission denied an application by General Mills, Inc., for a stay of the commencement of complaint counsel's deposition program pending respondents' appeal from the discovery order of July 15, 1975. On Aug. 1, 1975, the law judge denied respondents' joint request for a determination that the order raised issues which met the criteria for interlocutory review set forth in Section 3.23(b) of the rules of practice.

Respondents claim that the law judge's refusal to grant their request for a determination under Section 3.23(b) was an abuse of discretion and that the Commission has the inherent power to review any ruling by an administrative law judge. However, as the Commission has already ruled in this case, "the Administrative Law Judge has broad discretion in controlling the conduct of adjudicative proceedings, and his rulings will be reviewed only in cases of clear abuse." Order Denying Applications for Review, May 29, 1974, p. 3. Respondents have not made such a showing.

Complaint counsel's deposition schedule is undoubtedly extensive, but the law judge has found that the information sought is "highly relevant" to the allegations in the complaint and that the depositions may facilitate the trial of this matter. He has also found that "[d]iscovery of the information known to individual employees of respondents is available only through personal confrontation with these individuals," and that the discovery could not be accomplished by voluntary methods order denying respondents' joint motion to nullify the order of June 19, 1975, for the taking of depositions requested by complaint counsel, July 15, 1975, p. 3. We cannot find that the law judge abused his discretion in making these determinations.

However we do not overlook respondents' unanswered assertion that at initial pretrial hearings in August 1972 complaint counsel indicated a need for only limited further discovery. We are concerned that more than three years have elapsed since the complaint issued in this matter. Under these circumstances, measures must be taken to assure that any remaining discovery is completed as expeditiously as possible.

It is ordered, That respondents' joint application for review of the order of the administrative law judge, dated July 15, 1975, be, and it hereby is, denied;

It is further ordered, That the administrative law judge, after consultation with the parties, promptly establish a schedule for trial and that he certify to the Commission a report on the status of this matter in 30 days.

IN THE MATTER OF

RETAIL CREDIT COMPANY

Docket 8954. Order, Sept. 16, 1975

Directions issued to administrative law judge on disposition of *ex parte* communication.

Appearances

For the Commission: *Virginia M. Conway, Robert W. Russell* and *David G. Grimes, Jr.*

For the respondent: *E. D. DeVaney, Jr.*, Atlanta, Ga., and *Sutherland, Asbill & Brennan*, Wash., D.C.

ORDER TO ADMINISTRATIVE LAW JUDGE DIRECTING DISPOSITION OF EX PARTE COMMUNICATION

The administrative law judge has certified to the Commission pursuant to Section 4.7(c) of the rules of practice, a letter he received on July 14, 1975, addressed to "Administrative Law Judge, Federal Trade Commission, Washington, D.C."

The letter clearly constitutes an *ex parte* communication under Section 4.7(a) and, ordinarily, should be placed on the public record rules of practice, Section 4.7(c). However, although the letter is unsigned, the writer, an employee of respondent, apparently fearing that details are revealed in the letter which would disclose his identity, states his belief that, unless the letter's confidentiality is preserved, he will lose his job.[1] Accordingly,

It is ordered, That the administrative law judge advise counsel of the substance of the communication and that, upon request, counsel be permitted to examine the communication, with instructions that they not disclose any identifying details to respondent or others;

It is further ordered, That the communication not be considered by the administrative law judge in the decision of this case.

[1] The Commission does not lightly assume that adverse action would be taken against an employee who presented information in connection with an adjudicative proceeding.

IN THE MATTER OF

AMWAY CORPORATION, INC., ET AL.

Docket 9023. Order, Sept. 16, 1975

Denial of respondents' motion to dismiss the complaint or in alternative to withdraw matter from adjudication for settlement purposes.

Appearances

For the Commission: *Joseph S. Brownman* and *D. Stuart Cameron.*
For the respondents: *Lee Leovinger, Hogan & Hartson,* Wash., D.C.

ORDER DENYING RESPONDENTS' MOTION TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, TO WITHDRAW FROM ADJUDICATION

Respondents move to dismiss the complaint, or in alternative, to withdraw the matter from adjudication until the Commission has afforded respondents an opportunity "fully to exercise their rights" to negotiate a settlement. Their motion was certified to the Commission by the administrative law judge pursuant to Section 3.22(a) of the rules of practice.

Respondents claim that (1) evidence was obtained by staff during the course of the pre-complaint investigation in an improper fashion and (2) respondents were not afforded an opportunity to negotiate a settlement prior to the issuance of the Part III complaint.

The first claim must be rejected. Respondents contend that during the course of the pre-complaint investigation Commission staff sent letters seeking information from individual Amway distributors which falsely purported to be compulsory process and which misrepresented that Amway distributors were not under investigation.

We have, however, previously rejected challenges to the sufficiency and propriety of pre-complaint investigations. E.g., *Food Fair Stores, Inc.,* Docket No. 8935, order denying motion for reconsideration, Apr. 23, 1974 [83 F.T.C. 1578]; *All-State Industries of North Carolina,* supplemental clarifying opinion of the Commission, 74 F.T.C. 1591, 1592 (1968).

If a complaint were to be open to challenge on the ground that there was inadequate or incompetent evidence before the Commission or the staff prior to issuance of the complaint, "* * * the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a [respondent] could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence" presented by the staff to the Commission. *Lawn* v. *United*

States, 355 U.S. 339, 349 (1958); *Costello* v. *United States*, 350 U.S. 359, 363 (1956) (indictment not subject to challenge on the ground that incompetent evidence presented to grand jury).[1]

Our ruling is, of course, without prejudice to any attempts by respondents to move the administrative law judge to suppress evidence they claim to have been improperly obtained.

Finally, the Commission rejects respondents' claim that they had a right under Part II of the Commission's Rules of Practice to negotiate a settlement. The rules in effect prior to Apr. 4, 1975, like those presently in effect, afforded the Commission broad discretion to determine whether persons should be afforded an opportunity to have a matter disposed of without resort to Part III adjudicative procedures. There has been no showing that this discretion was abused.

It should be noted that under the amended rules respondents can still seek a settlement by filing a motion before the administrative law judge to withdraw the matter from adjudication. Even if the motion is opposed by complaint counsel, the law judge may certify the matter to the Commission with his recommendation if it appears that there is a "likelihood of settlement" rules of practice, Section 3.25(b). Accordingly,

It is ordered, That the aforesaid motion to dismiss the complaint or, in the alternative, to withdraw the matter from adjudication be, and it hereby is, denied.

Chairman Engman not participating.

IN THE MATTER OF

AMERICAN TRACTOR TRAILER TRAINING, INC., ET AL.

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

Docket 9025. Complaint, Apr. 8, 1975-Decision, Sept. 17, 1975

Consent order requiring an East Hartford, Conn., truck driving school and its wholly-owned subsidiary in Foxboro, Mass., among other things to cease using unfair and deceptive sales tactics in promoting their services.

Appearances

For the Commission: *Martin J. Dolan, Jr., David W. DiNardi* and *Charles M. LaDue.*

[1] An indictment valid on its face is not subject to challenge even on the ground that the grand jury acted on the basis of information obtained in violation of a defendant's Fifth Amendment privilege. *United States* v. *Blue*, 384 U.S. 251, 255 (1966).

For the respondents: *Gerald R. Lublin, Lublin & Lublin,* East Hartford, Conn.

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 American Tractor Trailer Training, Inc., American Tractor Trailer Training School, Inc., corporations, and Charles R. Schwab, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Tractor Trailer Training, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 178 Burnside Ave., in the City of East Hartford, Conn.

Respondent American Tractor Trailer Training School, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at U.S. Route 1, in the town of Foxboro, Mass. It is a wholly-owned subsidiary of respondent American Tractor Trailer Training, Inc.

Respondent Charles R. Schwab is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of respondent American Tractor Trailer Training, Inc.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of training courses purporting to prepare graduates thereof for employment as truck drivers. Said courses, when pursued to completion, consist of a series of lessons presented during a period of in-residence training at places designated by respondents.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the training courses by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertise-

ments inserted in newspapers of general interstate circulation and by means of commercial announcements over television and radio transmitted across State lines, and by means of brochures, pamphlets and other promotional materials disseminated through the United States mails, for the purpose of obtaining leads or prospects for the sale of such training courses, and for the purpose of inducing the purchase of such training courses.

Respondents, from their principal places of business located in Massachusetts and Connecticut, utilize the services of salesmen and cause said salesmen to visit prospective purchasers located in various other States who respond to the respondents' advertisements and commercial announcements for the purpose of inducing the purchase of such training courses by such prospective purchasers.

Respondents transmit and receive, and cause to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such training courses, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to and from the several places of business operated by the respondents located as aforesaid and to prospective purchasers and purchasers thereof, located in various other States of the United States, other than the State of origination. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said training courses in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, for the purpose of obtaining leads or prospects for the sale of such training courses, and for the purpose of inducing the purchase of such training courses, respondents have made numerous statements and representations in newspaper advertisements, television and radio commercials, business reply cards, brochures and other printed materials regarding job opportunities, wages, the qualifications of respondents' students who complete respondents' training courses, the nature of the training provided in respondents' training courses, the placement assistance furnished to respondents' graduates in obtaining employment, and other matters. Certain of the statements and representations have been placed by respondents in the "Help Wanted" columns of newspaper advertisements.

In the further course and conduct of their business as aforesaid, respondents cause persons who respond to their newspaper advertisements, television and radio commercials and business reply cards to be visited by respondents' salesmen in the homes of such persons.

For the purpose of inducing the sale of respondents' training courses,

such salesmen make to prospective purchasers many statements and representations, directly or by implication, regarding job opportunities, wages, the qualifications of respondents' students who complete respondents' training courses, the nature of the training provided in respondents' training courses, the placement assistance furnished to respondents' graduates in obtaining employment, and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents, and other statements and representations are made orally by said salesmen.

Typical and illustrative, but not all inclusive, of said statements and representations relating to the hereinafter described truck driver training courses are the following:

A. Newspaper Advertisements.

MEN NEEDED

To learn to drive tractor trailer. Full or part-time training. Earn up to $314 per week with O.T. American Tractor Trailer Training, East Hartford, Connecticut, is approved for training veterans. Call 1-257-0111. No experience necessary, drive gas and diesel trucks. Budget plan available.

* * * * *

Learn To Drive Tractor Trailer

1. Earn $205 to $282 union scale with overtime.
2. Free pension plan, optical, dental and medical program.
3. 10 paid holidays.
4. Up to 4 weeks paid vacation.

Attend American Tractor Trailer School full or part time on a short training program.

APPROVED FOR VETERANS *CALL ANYTIME 447-9776.*

LEARN TO DRIVE TRACTOR TRAILER

You can Earn High Wages

You Receive Placement Assistance

You Train for Class 3 License

Call AMERICAN TRACTOR TRAINING SCHOOL 1-603-889-4471

* * * * *

NEED A FUTURE?

DRIVE TRACTOR TRAILERS

1. Earn over $300 weekly with O.T.
2. Earn your Class 1 license
3. Attend full or part time days or evenings
4. Let American help you get a job after graduating

AMERICAN TRACTOR TRAILER TRAINING, HARTFORD, CONNECTICUT

Call Schenectady 439-4982 ANYTIME

B. Business Reply Cards.

MEN! Get That Job Operating Tractor Trailers. Big Demand for Professional Drivers. Experienced Men Are Earning Up To $275 Per Week! American Tractor Trailer Training, Inc. Can Train You To Operate This Equipment:

Tractors	*Transmissions*
Mack	15 Speed Tri-Plex
GMC	5 Speed-2 Speed Axle
White	8-10 Speed Road Ranger
Mack	Du-Plex
International	5 Speeds

* * * Mail Card or Write * * * Find Out How You Can Qualify For A Top Job in the Trucking Industry!

* * * * *

TRACTOR TRAILER TRAINING

Professionally trained, highly skilled Tractor Trailer drivers are needed as never before. Drivers are currently earning $12,000 a year and up, and are protected by a multitude of benefits, including free optical, dental, and medical care. You can look forward to a secure, progressive future in a career that offers new horizons, challenges, and accomplishments * * *

Professional Placement Assistance * * *

American Tractor Trailer Training School, Inc.,

U.S. Route 1, Foxboro, Massachusetts 02023

C. Statements from Brochures.

The ever expanding use of Tractor-Trailers by both private industry and the transportation industry, creates a constant demand for better trained drivers. These drivers have an excellent income to provide their families with the pleasures of modern living * * * the policy of "American Tractor Trailer Training, Inc." has always been to personally interview all applicants in their homes to ascertain their qualifications and fitness for such training. Our local representative will contact you shortly to arrange a personal interview.

THE ENCLOSED QUALIFICATION SHEET MUST BE COMPLETED BEFORE OUR REPRESENTATIVE ARRIVES AT YOUR HOME. THE EXTRA TIME THIS SAVES WILL ENABLE HIM TO BETTER EVALUATE YOUR QUALIFICATIONS FOR TRACTOR-TRAILER TRAINING.

* * * * *

Why do you want to establish yourself in the heavy trucking industry? * * * If accepted, can you devote a number of hours to your training? * * * After graduation would you prefer local employment, or if the conditions and locations were satisfactory, would you be willing to relocate? * * * Can you accept employment immediately after completion of the training course? * * *

* * * * *

Course Outline* * *

G. Road Instruction (No Traffic)	4 hours
H. Road Instruction (Traffic)	14 hours
I. Final Road Test (In Traffic)	2 hours

D. Oral Statements by Sales Representatives.

Truck drivers are making $14,000 to $22,000 a year.

After graduating, you can walk in anywhere and get a truck driver's job.

The trucking field is crying for truck drivers.

There are over 190 trucking companies who hire their truck drivers through American Tractor Trailer.

The course takes one month, and you'll be driving the second month.

I only want to talk to individuals who are seriously interested in driving tractor trailers.

The school accepts only four out of every ten applicants.

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

1. The corporate respondents operate, represent or are affiliated with, trucking companies.

2. Respondents offer employment to qualified applicants who will be trained as truck drivers.

3. Respondents have been requested by trucking companies to train drivers for jobs as truck drivers with such companies upon completion of said training.

4. Graduates of respondents' training courses will be qualified thereby for employment as truck drivers without further training or experience.

5. Respondents had a reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' training courses.

6. Respondents had a reasonable basis from which to conclude that persons who complete respondents' training courses earn such amounts as $300 per week, or over $12,000 per year and other stated amounts as truck drivers.

7. Respondents provide a placement service which will secure jobs as truck drivers for graduates of said courses who want to work in that capacity.

8. Graduates of respondents' training courses who want to work are assured jobs as truck drivers as a consequence of graduating from said courses.

9. Respondents' sales representatives are trained or qualified vocational counselors.

10. Respondents accept only qualified candidates for enrollment in said training courses.

11. Respondents' training courses provide a minimum of 20 hours of road-driving instruction.

PAR. 6. In truth and in fact:

1. The corporate respondents do not operate or represent, and are not affiliated with trucking companies.

2. Respondents do not offer employment to persons who will be trained as truck drivers. The real purpose of such advertisements is to obtain leads to prospective purchasers of respondents' training courses.

3. Respondents have not been requested by trucking companies to train persons for jobs as truck drivers with such companies upon completion of said training.

4. Graduates of respondents' training courses are not thereby qualified for employment as truck drivers without further training or experience.

5. Respondents had no reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' training courses.

6. Respondents had no reasonable basis from which to conclude that persons who complete respondents' training courses earn amounts such as $300 per week, over $12,000 per year and other stated amounts as truck drivers as a result of such training.

7. Respondents do not provide a placement service which will secure jobs as truck drivers for graduates of said courses who want to work in that capacity.

8. Graduates of said courses who want to work are not assured jobs as truck drivers as a consequence of graduating from said courses.

9. Respondents' sales representatives are not trained or qualified vocational counselors. Respondents' representatives are commissioned salesmen who possess no special training, experience, title, qualifications or status.

10. Respondents accept all candidates for enrollment in said training courses. Respondents impose no qualifications on prospective enrollees and accept any person for enrollment in such courses who is willing to execute a contract and pay the required tuition for the training courses.

11. Respondents' training courses do not provide a minimum of 20 hours of road-driving instruction. To the contrary, students receive substantially less road-driving instruction.

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

PAR. 7. Through the use of the aforesaid advertisements, television and radio commercials, business reply cards, brochures and otherwise, respondents have represented, directly or by implication, that there is or will be an urgent need or demand for respondents' graduates in positions for which respondents train them and that respondents' graduates earn such amounts as $300 per week, over $12,000 per year and other stated amounts as truck drivers. Respondents had at the

time of said representations no reasonable basis adequate to support the representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 8. (a) In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers without disclosing in advertising or through their sales representatives: (1) the recent percentage of persons who have completed the training course who were able to obtain the employment for which they were trained; (2) the employers that hired any such persons; (3) the initial salary any such persons received; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose a material fact which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

(b) Respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers without disclosing in advertising or through their sales representatives that:

1. Many employers of truck drivers prescribe a minimum age of twenty-one years of age for drivers;

2. Many employers of truck drivers give preferential consideration in hiring to driver-applicants who are twenty-five years of age or more because of insurance cost savings; and

3. Many employers of truck drivers give preferential consideration in hiring to driver-applicants with actual truck-driving experience.

Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 9. In the further course and conduct of their business and in the furtherance of their purpose of inducing prospective enrollees to

execute enrollment contracts for their training course, respondents and their employees, salesmen, and representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices.

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Eight, respondents or their representatives have been able to induce prospective enrollees into executing enrollment contracts upon initial contact without affording the enrollee sufficient time to carefully consider the purchase of the training course and the consequences thereof.

PAR. 10. Respondents have been and are now failing to disclose material facts while using the aforesaid unfair, false, misleading or deceptive acts and practices, to induce persons to pay or to contract to pay over to them substantial sums of money to purchase or pay for courses of instruction whose value was virtually worthless to said persons for purposes of obtaining future employment in the jobs for which they were provided training.

Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to, or to rescind such contractual obligations of, substantial numbers of enrollees and participants in such training courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between respondents and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals

engaged in the sale of training courses covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce a substantial number thereof to purchase respondents' training courses by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE LAW JUDGE

JULY 28, 1975

PRELIMINARY STATEMENT

The Commission issued a complaint in this matter on Apr. 8, 1975, charging American Tractor Trailer Training, Inc., American Tractor Trailer Training School, Inc. and Charles R. Schwab, individually and as an officer of said corporations, with unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

The complaint and the accompanying notice order were served on American Tractor Trailer Training School, Inc. on May 14, 1975, and on American Tractor Trailer Training, Inc. and Charles R. Schwab on May 15, 1975.

No answer or other response was received from any of the respondents within thirty (30) days following service of the complaint as required by the Commission's Rules of Practice for Adjudicative Proceedings, nor by the later date of July 9, 1975, set by the administrative law judge (see order providing for reconsideration of default if answer is filed by July 9, 1975, issued June 27, 1975, and order confirming default issued July 18, 1975).

Respondents are, therefore, in default and the undersigned so finds.

Section 3.12(c) of the Commission's Rules of Practice provides that

failure to file answer within the time provided shall be deemed to constitute waiver of the right of appearance and to contest the allegations of the complaint. Further, this Section authorizes the administrative law judge, without further notice to respondents, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order. Accordingly, the following findings, conclusions and order are issued:

FINDINGS OF FACT

PARAGRAPH 1. Respondent American Tractor Trailer Training, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 178 Burnside Ave., in the City of East Hartford, Conn.

Respondent American Tractor Trailer Training School, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at U.S. Route 1, in the town of Foxboro, Mass. It is a wholly-owned subsidiary of respondent American Tractor Trailer Training, Inc.

Respondent Charles R. Schwab is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of respondent American Tractor Trailer Training, Inc.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of training courses purporting to prepare graduates thereof for employment as truck drivers. Said courses, when pursued to completion, consist of a series of lessons presented during a period of in-residence training at places designated by respondents.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the training courses by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of general interstate circulation and by means of commercial announcements over television and radio transmitted across State lines, and by means of brochures, pamphlets and other promotional materials disseminated through the United States mails, for the purpose of obtaining leads or prospects for the sale

of such training courses, and for the purpose of inducing the purchase of such training courses.

Respondents, from their principal places of business located in Massachusetts and Connecticut, utilize the services of salesmen and cause said salesmen to visit prospective purchasers located in various other States who respond to the respondents' advertisements and commercial announcements for the purpose of inducing the purchase of such training courses by such prospective purchasers.

Respondents transmit and receive, and cause to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such training courses, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to and from the several places of business operated by the respondents located as aforesaid and to prospective purchasers and purchasers thereof, located in various other States of the United States, other than the State of origination. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said training courses in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, for the purpose of obtaining leads or prospects for the sale of such training courses, and for the purpose of inducing the purchase of such training courses, respondents have made numerous statements and representations in newspaper advertisements, television and radio commercials, business reply cards, brochures and other printed materials regarding job opportunities, wages, the qualifications of respondents' students who complete respondents' training courses, the nature of the training provided in respondents' training courses, the placement assistance furnished to respondents' graduates in obtaining employment, and other matters. Certain of the statements and representations have been placed by respondents in the "Help Wanted" columns of newspaper advertisements.

In the further course and conduct of their business as aforesaid, respondents cause persons who respond to their newspaper advertisements, television and radio commercials, and business reply cards to be visited by respondents' salesmen in the homes of such persons.

For the purpose of inducing the sale of respondents' training courses, such salesmen make to prospective purchasers many statements and representations, directly or by implication, regarding job opportunities, wages, the qualifications of respondents' students who complete respondents' training courses, the nature of the training provided in respondents' training courses, the placement assistance furnished to

respondents' graduates in obtaining employment, and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents, and other statements and representations are made orally by said salesmen.

Typical and illustrative, but not all inclusive, of said statements and representations relating to the hereinafter described truck driver training courses are the following:

A. Newspaper Advertisements.

MEN NEEDED

To learn to drive tractor trailer. Full or part-time training. Earn up to $314 per week with O.T. American Tractor Trailer Training, East Hartford, Connecticut, is approved for training veterans. Call 1-257-0111. No experience necessary, drive gas and diesel trucks. Budget plan available.

* * * * *

Learn To Drive Tractor Trailer

1. Earn $205 to $282 union scale with overtime.
2. Free pension plan, optical, dental and medical program.
3. 10 paid holidays.
4. Up to 4 weeks paid vacation.

Attend American Tractor Trailer School full or part time on a short training program.

APPROVED FOR VETERANS CALL ANYTIME 447-9776.

LEARN TO DRIVE TRACTOR TRAILER
You can Earn High Wages
You Receive Placement Assistance
You Train for Class 3 License
CALL AMERICAN TRACTOR TRAINING SCHOOL 1-603-889-4471

* * * * *

NEED A FUTURE?
DRIVE TRACTOR TRAILERS

1. Earn over $300 weekly with O.T.
2. Earn your Class 1 license
3. Attend full or part time days or evenings
4. Let American help you get a job after graduating

AMERICAN TRACTOR TRAILER TRAINING, HARTFORD, CONNECTICUT
Call Schenectady 439-4982 ANYTIME

B. Business Reply Cards.

MEN! Get That Job Operating Tractor Trailers. Big Demand for Professional Drivers. Experienced Men Are Earning Up To $275 Per Week! American Tractor Trailer Training, Inc. Can Train You To Operate This Equipment:

Tractors	*Transmissions*
Mack	15 Speed Tri-Plex
GMC	5 Speed-2 Speed Axle

White	8-10 Speed Road Ranger
Mack	Du-Plex
International	5 Speeds

* * * Mail Card or Write * * * Find Out How You Can Qualify For A Top Job in the Trucking Industry!

* * * * *

TRACTOR TRAILER TRAINING

Professionally trained, highly skilled Tractor Trailer drivers are needed as never before. Drivers are currently earning $12,000 a year and up, and are protected by a multitude of benefits, including free optical, dental, and medical care. You can look forward to a secure, progressive future in a career that offers new horizons, challenges, and accomplishments * * *

Professional Placement Assistance * * *

American Tractor Trailer Training School, Inc.,

U.S. Route 1, Foxboro, Massachusetts 02023

C. Statements from Brochures.

The ever expanding use of Tractor-Trailers by both private industry and the transportation industry, creates a constant demand for better trained drivers. These drivers have an excellent income to provide their families with the pleasures of modern living * * * the policy of "American Tractor Trailer Training, Inc." has always been to personally interview all applicants in their homes to ascertain their qualifications and fitness for such training. Our local representative will contact you shortly to arrange a personal interview.

THE ENCLOSED QUALIFICATION SHEET MUST BE COMPLETED BEFORE OUR REPRESENTATIVE ARRIVES AT YOUR HOME. THE EXTRA TIME THIS SAVES WILL ENABLE HIM TO BETTER EVALUATE YOUR QUALIFICATIONS FOR TRACTOR-TRAILER TRAINING.

* * * * *

Why do you want to establish yourself in the heavy trucking industry? * * * If accepted, can you devote a number of hours to your training? * * * After graduation would you prefer local employment, or if the conditions and locations were satisfactory, would you be willing to relocate? * * * Can you accept employment immediately after completion of the training course? * * *

* * * * *

Course Outline* * *

G. Road Instruction (No Traffic)	4 hours
H. Road Instruction (Traffic)	14 hours
I. Final Road Test (In Traffic)	2 hours

D. Oral Statements by Sales Representatives.

Truck drivers are making $14,000 to $22,000 a year.

After graduating, you can walk in anywhere and get a truck driver's job.

The trucking field is crying for truck drivers.

There are over 190 trucking companies who hire their truck drivers through American Tractor Trailer.

The course takes one month, and you'll be driving the second month.

I only want to talk to individuals who are seriously interested in driving tractor trailers.

The school accepts only four out of every ten applicants.

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

1. The corporate respondents operate, represent or are affiliated with, trucking companies.

2. Respondents offer employment to qualified applicants who will be trained as truck drivers.

3. Respondents have been requested by trucking companies to train drivers for jobs as truck drivers with such companies upon completion of said training.

4. Graduates of respondents' training courses will be qualified thereby for employment as truck drivers without further training or experience.

5. Respondents had a reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' training courses.

6. Respondents had a reasonable basis from which to conclude that persons who complete respondents' training courses earn such amounts as $300 per week, or over $12,000 per year and other stated amounts as truck drivers.

7. Respondents provide a placement service which will secure jobs as truck drivers for graduates of said courses who want to work in that capacity.

8. Graduates of respondents' training courses who want to work are assured jobs as truck drivers as a consequence of graduating from said courses.

9. Respondents' sales representatives are trained or qualified vocational counselors.

10. Respondents accept only qualified candidates for enrollment in said training courses.

11. Respondents' training courses provide a minimum of 20 hours of road-driving instruction.

PAR. 6. In truth and in fact:

1. The corporate respondents do not operate or represent, and are not affiliated with trucking companies.

2. Respondents do not offer employment to persons who will be

trained as truck drivers. The real purpose of such advertisements is to obtain leads to prospective purchasers of respondents' training courses.

3. Respondents have not been requested by trucking companies to train persons for jobs as truck drivers with such companies upon completion of said training.

4. Graduates of respondents' training courses are not thereby qualified for employment as truck drivers without further training or experience.

5. Respondents had no reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' training courses.

6. Respondents had no reasonable basis from which to conclude that persons who complete respondents' training courses earn amounts such as $300 per week, over $12,000 per year and other stated amounts as truck drivers as a result of such training.

7. Respondents do not provide a placement service which will secure jobs as truck drivers for graduates of said courses who want to work in that capacity.

8. Graduates of said courses who want to work are not assured jobs as truck drivers as a consequence of graduating from said courses.

9. Respondents' sales representatives are not trained or qualified vocational counselors. Respondents' representatives are commissioned salesmen who possess no special training, experience, title, qualifications or status.

10. Respondents accept all candidates for enrollment in said training courses. Respondents impose no qualifications on prospective enrollees and accept any person for enrollment in such courses who is willing to execute a contract and pay the required tuition for the training courses.

11. Respondents' training courses do not provide a minimum of 20 hours of road-driving instruction. To the contrary, students receive substantially less road-driving instruction.

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

PAR. 7. Through the use of the aforesaid advertisements, television and radio commercials, business reply cards, brochures and otherwise, respondents have represented, directly or by implication, that there is or will be an urgent need or demand for respondents' graduates in positions for which respondents train them and that respondents' graduates earn such amounts as $300 per week, over $12,000 per year and other stated amounts as truck drivers. Respondents had at the time of said representations no reasonable basis adequate to support

the representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 8. (a) In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers without disclosing in advertising or through their sales representatives: (1) the recent percentage of persons who have completed the training course who were able to obtain the employment for which they were trained; (2) the employers that hired any such persons; (3) the initial salary any such persons received; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose a material fact which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

(b) Respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers without disclosing in advertising or through their sales representatives that:

1. Many employers of truck drivers prescribe a minimum age of twenty-one years for drivers;

2. Many employers of truck drivers give preferential consideration in hiring to driver-applicants who are twenty-five years of age or more because of insurance cost savings; and

3. Many employers of truck drivers give preferential consideration in hiring to driver-applicants with actual truck-driving experience.

Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 9. In the further course and conduct of their business and in the furtherance of their purpose of inducing prospective enrollees to execute enrollment contracts for their training course, respondents and

their employees, salesmen, and representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices.

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Eight, respondents or their representatives have been able to induce prospective enrollees into executing enrollment contracts upon initial contact without affording the enrollee sufficient time to carefully consider the purchase of the training course and the consequences thereof.

PAR. 10. Respondents have been and are now failing to disclose material facts while using the aforesaid unfair, false, misleading or deceptive acts and practices, to induce persons to pay or to contract to pay over to them substantial sums of money to purchase or pay for courses of instruction whose value was virtually worthless to said persons for purposes of obtaining future employment in the jobs for which they were provided training. Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to, or to rescind such contractual obligations of, substantial numbers of enrollees and participants in such training courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between respondents and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals engaged in the sale of training courses covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading,

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

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER

I

It is ordered, That respondents American Tractor Trailer Training, Inc., American Tractor Trailer Training School, Inc., corporations, their successors and assigns, and their officers, and Charles R. Schwab, individually and as an officer of said corporations, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driving or any other subject, trade or vocation, or of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing orally, visually, in writing or in any other manner, directly or by implication, that:

(a) Respondents operate, represent or are affiliated with trucking companies, employers of truck drivers, or any industry for which enrollees of any course are being trained; or misrepresenting, in any manner, the nature of respondents' business.

(b) Employment is being offered when the purpose of such offer is to obtain leads to prospective purchasers of such training courses.

(c) Respondents have been requested by trucking companies or any other business or organization to train persons for specific jobs; or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

(d) Graduates of said courses will be qualified thereby for employment as truck drivers without further training or experience.

(e) There is a need or demand of any size, proportion or magnitude for persons completing any of the courses offered by the respondents, or otherwise representing that opportunities for employment, or opportunities of any size, figure or number are available to such persons, or that persons completing said courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 6 of the order.

(f) Respondents or others provide a placement service which will or may secure a job for graduates of said courses.

(g) Graduates of said courses are assured of placement in the positions for which they have been trained; or representing that graduates of said courses will easily attain employment or that said courses are effective in preparing or qualifying any graduate for employment.

(h) Any person engaged in the promotion, offering for sale, sale, distribution or other use of said courses is a trained admissions counselor or vocational counselor; or misrepresenting the training, experience, title, qualifications or status of such person or the import or meaning of any advice given by or any other statement made by any such person.

(i) Respondents accept only qualified candidates for enrollment in said courses.

(j) Said courses provide a minimum of 20 hours of road-driving instruction, when such representations do not accurately disclose the actual number of hours of behind-the-wheel road-driving instruction furnished to enrollees; or misrepresenting, in any manner, the number of actual hours of behind-the-wheel road-driving instruction furnished to enrollees.

2. Placing advertisements in "Help Wanted" columns, or failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any truck driver training course offered by respondents, the following information:

(a) The title "IMPORTANT INFORMATION" printed in ten (10) point bold face type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of truck drivers prescribe a minimum age of twenty-one (21) years for drivers.

(2) Many employers of truck drivers give preferential consideration in hiring to driver-applicants who are twenty-five (25) years of age.

(3) Many employers of truck drivers give preferential consideration in hiring to driver-applicants with actual truck-driving experience.

4. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads, that respondents' business is solely and exclusively that of a private school, not affiliated with any members of the trucking industry or any member of any other industry.

5. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Paragraph 6 of this order and prescribed in Appendix A hereto.

6. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction offered by respondents, the following information in the format prescribed in Appendix A and for a base period designated as described in Appendix B hereto:

(1) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based; such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (2) above; and

(4) A list of firms or employers which are currently hiring graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (2) above.

Provided, however, This paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period established pursuant to Appendix B as prescribed in this paragraph. However, during such period the following statement, and no other, shall be made in lieu of the Appendix A disclosure form required by this paragraph:

DISCLOSURE NOTICE

This school [or course, as the case may be] has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school [course].

7. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in bold face type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point bold face type the following information and statements:

NOTICE OF CANCELLATION
(*enter date of transaction*)

_____
(date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN TEN (10) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND

ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

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

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

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [*Name of seller*], AT _____

[*address of seller's place of business*] NOT LATER THAN MIDNIGHT OF (*date*).

I HEREBY CANCEL THIS TRANSACTION.

_____
(Date)

_____
(Buyer's signature)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective enrollee's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within ten (10) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by respondents; (iii) cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

(f) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph.

8. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of truckdriver training or any other course offered to the public in any field in commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

9. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner, or by the acts and practices prohibited by this order.

II

It is further ordered, That:

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order.

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this paragraph with a form returnable to the

respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request.

(c) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order.

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order.

(e) Respondents herein inform the persons or entities described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order.

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order.

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on his or her own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance.

(h) Respondents herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That respondents herein present to each interested applicant or prospective student, immediately prior to the commencement of any interview or sales presentation, during which the purchase of or enrollment in any course of instruction offered by respondents herein is discussed or solicited, a 5" x 7" card containing only the following language:

YOU WILL BE TALKING TO A SALESPERSON

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

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

It is further ordered, That the individual respondent, Charles R. Schwab, 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 respondents' current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

APPENDIX A

DISCLOSURE FORM

(NAME OF SCHOOL) DROP OUT AND PLACEMENT RECORD FOR (NAME OF COURSE) FOR THE PERIOD OF (DATE) TO (DATE)

1. TOTAL ENROLLEES [Number]
2. TOTAL WHO FAILED TO COMPLETE THE COURSE [Number]
3. PERCENTAGE WHO FAILED TO COMPLETE THE COURSE [%]
4. TOTAL NUMBER OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM [Number]
5. PERCENTAGE OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM [% of Enrollees]
6. PERCENTAGE OF GRADUATES WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY TRAINED THEM [% of Graduates]
7. NUMBER AND PERCENTAGE OF TOTAL ENROLLEES AND GRADUATES WHO OBTAINED EMPLOYMENT IN THE FOLLOWING SALARY RANGES:

Less than $2.50 Per Hour	[Number] Students which is [%] of Total Graduates
$2.50—$3.99 Per Hour	" "
$4.00—$5.50 Per Hour	" "
$5.51—$7.00 Per Hour	" "
More Than $7.00 Per Hour	" "

8. EMPLOYERS HIRING PERSONS WHO GRADUATE FROM [NAME OF COURSE] FROM (DATE) TO (DATE) AS TRACTOR TRAILER DRIVERS

Names of Employers	Total Number of Graduates Hired

217-184 O - 76 - 44

APPENDIX B

"Base period" shall mean that period of time that begins with the entrance and ends with the graduation of respondents' most recent graduating class, provided that the class graduated at least three (3) months prior to the date on which respondents must begin to disseminate the necessary statistics with respect to the base period.

The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment success of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the base period that covers their graduating class.

On the first business day falling more than three (3) months after the graduation of the most recent graduating class respondents shall begin to disseminate statistics for that base period. Respondents shall continue to distribute said statistics until the first business day falling three (3) months after the graduation of the next graduating class.

The following example describes how base periods will be utilized by respondents:

Base period 1 will cover the period that begins with the entrance and ends with the graduation of the first class whose graduation date occurs after the effective date of this order. Therefore if a class began on Jan. 1, 1975 and graduated on Mar. 1, 1975 then from Mar. 1, 1975 until June 1, 1975 respondents would monitor and record the employment experience of all enrollees whose enrollment terminated during the base period, Jan. 1, 1975 to Mar. 1, 1975. Respondents would begin disseminating these statistics on the first business day after June 1, 1975.

Base period number two (2) would begin with entrance and end with the graduation of the next graduating class. If that class began on Feb. 1, 1975 and graduated on Apr. 1, 1975 then from Apr. 1, 1975 to July 1, 1975 respondents would monitor and record the employment experience of all enrollees whose enrollment terminated during base period number two (2) Feb. 1, 1975 to Apr. 1, 1975. Respondents would begin disseminating these statistics on the first business day after July 1, 1975.

FINAL ORDER

The administrative law judge filed his initial decision in this matter on July 28, 1975, finding respondents to have engaged in the acts and practices as alleged in the complaint and entering a cease and desist order against respondents. That initial decision was entered after the default of respondents in filing an answer to the complaint and to the administrative law judge's subsequent order providing for reconsideration of default if answer is filed by July 9, 1975. A copy of the initial decision and order was served on the respondents American Tractor Trailer Training, Inc. and Charles R. Schwab on Aug. 14, 1975 and respondent American Tractor Trailer Training School, Inc. on Aug. 18, 1975. No appeal was taken from the initial decision.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice,

It is ordered, That the initial decision and order contained therein shall become effective on Sept. 17, 1975; and

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

IN THE MATTER OF

CHECKMATE INQUIRY SERVICE, INC., ET AL.

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

Docket C-2728. Complaint, Sept. 22, 1975-Decision, Sept. 22, 1975

Consent order requiring a New York City consumer credit reporting agency, among other things to cease failing to comply with the requirements of the Fair Credit Reporting Act pertaining to the reporting of information disputed by the consumer. Respondents are further required to retain evidence of compliance for a period of two years.

Appearances

For the Commission: *Salvatore F. Sangiorgi.*
For the respondents: *Pro se.*

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 Checkmate Inquiry Service, Inc., a corporation, and Samuel Berke, 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 Checkmate Inquiry Service, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 29 E. 10th St., New York, N.Y.

Respondent Samuel Berke is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and

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

PAR. 2. Respondents are now, and for some time in the past have been, for monetary fees and/or dues, regularly engaged in the practice of assembling or evaluating consumer credit information for the purpose of furnishing to third parties consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act. Respondents regularly use a means or facility of interstate commerce for the purpose of preparing and furnishing said consumer reports. Therefore, respondents are a consumer reporting agency, as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondents in the ordinary course and conduct of their business as aforesaid are now, and subsequent to Apr. 25, 1971 have been, engaged in the preparation, offering for sale, sale and distribution of information on consumers, including consumer reports, as defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 4. Respondents fail to:

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

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

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

PAR. 5. When a dispute cannot be resolved and the consumer submits a brief statement of his or her version of the nature of the dispute, respondents fail to clearly note in subsequent consumer reports containing the information in question that it is disputed by the consumer and provide either the consumer statement or a clear and accurate codification or summary thereof.

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

PAR. 6. The acts and practices and omissions set forth in Paragraphs Four and Five are in violation of the Fair Credit Reporting Act and, pursuant to Section 621(a) of that Act, respondents have thereby violated Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Checkmate Inquiry Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 29 E. 10th St., New York, N.Y.

Respondent Samuel Berke is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent. His principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That respondents Checkmate Inquiry Service, Inc., a corporation, its successors and assigns, and its officer Samuel Berke, 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 collecting, assembling or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. L. No. 91-508, 15 U.S.C. §1601, *et seq.*), shall forthwith cease and desist from:

1. Failing to explicitly disclose in writing to the consumer his or her right to request that a consumer statement with respect to disputed information be sent by respondents to persons designated by the consumer who have received the deleted or disputed information within two years for employment purposes or within six months for any other purpose. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

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

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

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

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

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

It is further ordered, That the 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 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

KELLOGG COMPANY, ET AL.

Docket 8883. Order, Sept. 23, 1975

Commission directs chief administrative law judge, or his designee, to certify status report to the Commission no later than Oct. 20, 1975.

*Appearances**

ORDER

The administrative law judge has filed a motion to modify the Commission's order denying joint application for review, dated Sept. 16, 1975, to provide more time for the filing of the status report required by the order.

Although, under other circumstances, the reasons stated in the motion may have justified an extension of time, our concern that the case proceed to trial as expeditiously as possible requires that these matters be handled by the chief administrative law judge, or his designee, rather than delay them. Accordingly,

It is ordered, That the chief administrative law judge, or his designee, after consultation with the parties, schedule a trial as promptly as possible and certify to the Commission a report on the status of this matter no later than Oct. 20, 1975.

---

* For appearances, see p. 650, herein.

IN THE MATTER OF

WARNER-LAMBERT COMPANY

Docket 8891. Order, Sept. 23, 1975

Genuine and authentic copies admitted into the record to replace exhibits entered into evidence at trial before administrative law judge but which are presently missing from official exhibit binders.

Appearances

For the Commission: *Wallace S. Snyder* and *William S. Busker.*

For the respondents: *Mudge, Rose, Guthrie & Alexander*, New York City and *S. Sharp, Bergson, Borkland, Margolis & Adler*, Wash., D.C.

ORDER GRANTING MOTION TO REPLACE EXHIBITS IN THE RECORD

Respondent and counsel supporting the complaint having jointly moved, by motion received Sept. 15, 1975, that the Commission place into the record of this case certain genuine and authentic copies of documents which were admitted as exhibits during the trial of this matter before the administrative law judge, but which exhibits are missing from the official exhibit binders,

It is ordered, That the genuine and authentic copies submitted by the parties pursuant to their joint motion received Sept. 15, 1975, and described therein, be admitted to replace exhibits entered into evidence at the trial before the administrative law judge but which exhibits are presently missing from the official exhibit binders.

IN THE MATTER OF

GENERAL MILLS, INC.

Docket C-1501. Order, Sept. 23, 1975

Denial of respondent's petition to reopen proceedings for purpose of setting aside the consent order.

Appearances

For the Commission: *Robert E. Liedquist.*

For the respondents: *Davis, Polk, Wardwell*, New York City and *Robert L. Fulgency*, Minneapolis, Minn.

ORDER DENYING PETITION TO REOPEN PROCEEDINGS

On July 25, 1975, respondent petitioned, pursuant to Section 3.72(b) of the Commission's Rules of Practice, to reopen the proceedings in this matter for the purpose of setting aside the consent order entered on Mar. 11, 1969. That consent order attempted to remedy an alleged violation of Section 7 of the Clayton Act through General Mills' acquisition of Morton Foods and Tom Huston Peanut Company (Tom's). The Commission's charge was that those acquisitions substantially lessened competition in the "manufacture, distribution and sales of potato chips and corn chips."

The order required respondent, for a period of ten years, to secure Commission approval prior to acquiring any firm engaged in the manufacture or wholesale distribution of any consumer products of the type manufactured by General Mills as of the date of the order and its subsidiaries (including Morton Foods and Tom's).

Several months after the order was entered, General Mills sold Morton Foods. General Mills now claims this sale has changed the facts sufficiently to make the order an "undue hardship for General Mills to continue to be burdened with * * *."

The arguments in support of this proposition do not explain what hardship is being suffered by General Mills, nor is there described any change in facts sufficient to justify modifications of a Commission order.

On review, the order is found to continue to be reasonably related to the conduct complained of and fairly calculated to assist in the restoration of competitive conditions in the marketplace.

It is ordered, That the aforesaid petition be, and it hereby is, denied.

IN THE MATTER OF

GENERAL MILLS, INC.

Docket C-1501. Order, Sept. 23, 1975

Denial of extension of time to Bureau of Competition to file answer to petition to reopen these proceedings.

*Appearances**

ORDER DENYING MOTION FOR AN EXTENSION OF TIME

By motion filed with the Secretary of the Commission on Sept. 11,

* For appearances, see p. 686, herein.

1975, the Bureau of Competition has applied to the Commission for an extension of time to answer the petition to reopen these proceedings filed by General Mills, Inc. on July 25, 1975.

The time to file a response to petitioner's motion expired, pursuant to subsection 3.72(b) of the Commission's Rules of Practice, on Aug. 24, 1975. The Bureau of Competition does not adequately explain its failure to file a timely response by the bare statement that the petition "having apparently been mislaid, was not received by the Compliance Division of the Bureau of Competition until Sept. 9, 1975." While the Commission may, on sufficient showing,[1] grant an extension of time to file a response to a motion to reopen proceedings, no such showing has been made in this case. Therefore,

It is ordered, That this motion be, and the same hereby is, denied.

IN THE MATTER OF

PAY 'N SAVE CORPORATION, ET AL.

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

Docket C-2729. Complaint, Sept. 23, 1975-Decision, Sept. 23, 1975

Consent order requiring a Seattle, Wash., retailer of drugs and toiletries, wearing apparel, hardware, garden supplies and sporting goods, in connection with its debt collection activities, among other things to cease failing to honor agreements it has made to refrain from further legal action in collecting debts from allegedly delinquent debtors. Where debtor violates the agreement, respondent still must give the debtor notice before taking further legal action. Further, respondent is required to inform the court of the existence of any such agreements or any other response to the summons made by debtor.

Appearances

For the Commission: *Randall H. Brooks.*

For the respondents: *Michael R. Rayton, Ryan, Bush, Swanson & Hendel*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Pay 'N Save Corporation, a corporation, and Donald Thoreson, an individual, hereinafter collectively referred to as respondents, have violated

[1] Including a demonstration of excusable neglect and substantial prejudice resulting from denial of the opportunity to file a response.

Section 5 of the Federal Trade Commission Act, and that a proceeding by it would be in the public interest, issues this complaint:

PARAGRAPH 1. Pay 'N Save Corporation (hereinafter referred to as Pay 'N Save) is a Washington corporation, with its principal place of business located at 1511 Sixth Ave., Seattle, Wash.

Donald Thoreson is an attorney admitted to practice in the state of Washington. He formulates, directs and controls, together with the officers of Pay 'N Save, policies, acts and practices of Pay 'N Save related to legal actions, active and threatened, and is directly and personally responsible for the execution of payment agreements as set forth below. He maintains his principal office at 610 Fourth and Pike Bldg., 1424 Fourth Ave., Seattle, Wash.

Allegations below of respondents' present acts and practices include past acts and practices.

PAR. 2. Pay 'N Save is engaged primarily in the business of retail sales of drugs and toiletries, wearing apparel, hardware, garden supplies and sporting goods through stores in the States of Washington, Oregon, Alaska and California, and through outlets of its subsidiaries including Ernst, Malmo, Lamonts Apparel, Incorporated, Seattle Wholesale Nurseries, Incorporated and Seattle Sporting Goods, Incorporated.

PAR. 3. In the course of its business, Pay 'N Save extends credit to consumers in several states through retail installment and revolving charge card agreements (hereinafter "consumer credit obligations"). Pay 'N Save also engages in the collection of alleged debts based on the above consumer credit obligations in several states. Thus, these activities are in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Pay 'N Save regularly resorts to use of judicial process to collect debts. The defendant debtors in such cases are predominantly low-income and middle-income persons not represented by counsel.

PAR. 5. In the course of using judicial process to collect debts, Pay 'N Save causes the service of summonses and complaints upon alleged debtors. Following the service of the summons and complaint, but before entry of any judgment, respondent Thoreson often enters into written or oral agreements with the alleged debtors which provide for the periodic payment of specific amounts of money until the alleged debt is satisfied. Pursuant to the making of such agreements, respondents send or cause letters to be sent to the alleged debtors. Typical, but not all inclusive, of the content of such letters are the following statements and representations:

1. This will acknowledge receipt of your recent payment in the sum of $———. We shall expect you to make monthly payments of $———

for the next ——— months until the balance is paid in full. If you follow through with these payments we shall work with you.

2. In line with our agreement we shall expect you to send us a check of $——— by ——————— and we shall also expect you to send us $——— on the ——— of each month thereafter until the account is paid in full. If these checks are sent as scheduled we will work with you. If not, we will proceed with additional legal steps.

PAR. 6. Through the use of the foregoing statements, and other similar statements, representations, and agreements, respondents have represented, either directly or by implication, that no further legal action would be taken in the cases involved as long as the alleged debtor complied with the payment agreement.

PAR. 7. The statements and representations described in Paragraphs Five and Six have the tendency and capacity to cause alleged debtors, in reliance on these statements and representations, to make substantial payments to Pay 'N Save prior to any final judicial determination of liability and without the protection of statutory garnishment limitations or exemptions to post-judgment executions, and to fail to make a legal appearance in the lawsuit, to obtain counsel, or otherwise take steps to defend or protect their interests.

PAR. 8. In truth and in fact, respondents proceed to take further legal action, including obtaining default judgment without prior notice to the alleged debtor, in cases where the debtor is complying with the terms of the agreement and without regard to the debtor's compliance with the payment agreements. Furthermore, respondents fail to inform the court of the existence of such agreements or of the fact of the debtor's appearance or other response to the summons, whether formal or informal, written or oral, and thus are able to, and do, obtain default judgments without any prior notice to debtor.

Therefore, the statements, representations and practices described above are unfair, false, misleading and deceptive.

PAR. 9. The acts and practices alleged above are all to the prejudice and injury of the public and 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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued

by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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 Pay 'N Save Corporation is a Washington corporation with its principal place of business located at 1511 Sixth Ave., Seattle, Wash.

Respondent Donald Thoreson is an attorney admitted to practice in the State of Washington. He formulates, directs and controls, together with officers of said corporation, the policies, acts and practices of said corporation related to legal actions, active and threatened. His principal office is at 610 Fourth and Pike Bldg., 1424 Fourth Ave., Seattle, Wash.

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

ORDER

It is ordered, That respondents Pay 'N Save Corporation (hereinafter Pay 'N Save), a corporation, its successors, assigns, officers, agents, representatives and employees, and Donald Thoreson, an individual, directly or through any other device, in connection with the collection of consumer credit obligations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Filing any motion for default judgment against an alleged debtor with whom they have entered an agreement, either written or oral, regarding the payment of a consumer credit obligation, subsequent to

service of summons and complaint upon the alleged debtor, unless the alleged debtor is given at least 10 days notice prior to entry of the default judgment.

2. Taking a default judgment in any lawsuit instituted to collect a consumer credit obligation when subsequent to service of summons and complaint upon the alleged debtor

a. the respondents have agreed, either orally or in writing, to a method of payment, and

b. the alleged debtor is complying with the terms of such agreement.

3. Failing to inform the court of any timely appearance or response to the summons, formal or informal, written or oral, made by the alleged debtor subsequent to service of summons and complaint, prior to obtaining a default judgment.

It is further ordered, That where respondents learn subsequent to the filing of a motion for default judgment that the preceding paragraph has not been complied with, they shall forthwith terminate the lawsuit and vacate any default judgment entered therein.

It is further ordered, That Pay 'N Save prepare and maintain records of suits instituted by Pay 'N Save or any of its divisions or subsidiaries, agents or assignees for the collection of consumer credit obligations in which default judgments have been granted which shall include copies of all legal papers relating to the default judgment, copies of all written communication, and summaries of all oral communication between respondents and defendants in such suits during the period of time between service of summons and complaint and the granting of default judgment. Such records shall be maintained for a period of one year after the granting of default judgment and shall be made available to representatives of the Federal Trade Commission for inspection and copying at all times upon reasonable request therefor.

It is further ordered, That Pay 'N Save shall forthwith deliver a copy of this order to each of its subsidiaries, operating divisions and employees engaged in the collection of consumer credit obligations or enforcement of judgments based on consumer credit obligations.

It is further ordered, That Pay 'N Save 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, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent promptly notify the Commission of the discontinuance of his present business affiliation with Pay 'N Save and/or of any new affiliation with, or representation

of, a business, where such new affiliation or representation involves substantial collections of consumer credit obligations. Such notice shall include respondent's current business address and a statement as to the nature of the new business with which he is affiliated or which he is representing.

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

IN THE MATTER OF

GUILD INDUSTRIES CORP., ET AL.

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

Docket C-2730. Complaint, Sept. 26, 1975-Decision, Sept. 26, 1975

Consent order requiring a St. Petersburg, Fla., manufacturer and seller of baby furniture, among other things to cease misrepresenting endorsements by the medical profession; misrepresenting savings and prices; misrepresenting the status and/or qualifications of its employees; and using scare tactics to secure merchandise orders.

Appearances

For the Commission: *Sandra L. Bird.*
For the respondents: *Stephen E. Samnick*, Parsippany, N.J.

COMPLAINT

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

PARAGRAPH 1. Respondent Guild Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 230 - 23rd St. S., St. Petersburg, Fla.

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

PAR. 2. Respondents are now, and for some time last past have been engaged in the manufacture, offering for sale, sale and distribution of infant feeding tables and cribs to franchisees and distributors who sell them to the public. The feeding tables are sold under the trade name "Baby Butler" and the cribs under the trade names "Converta-Crib" and "Starlighter."

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

PAR. 4. In the course and conduct of their business as aforesaid, respondents have sold and distributed in commerce to franchisees and distributors who sell respondents' products to the public, various types of advertising and promotional materials including, but not limited to, flip-chart sales presentations, audio-visual demonstration materials, brochures and reprints of magazine and newspaper articles. Said promotional materials are designed to assist in and induce the sale of respondents' products. Some franchisees and distributors have added promotional materials of their own which follow the same general pattern of the materials supplied by the respondents.

Typical and illustrative of statements and representations contained in respondents' promotional materials, but not all inclusive thereof, are the following:

1. Baby Butler products are recommended by leading hospitals, doctors, nurses and pediatricians.

2. Respondents' products are being sold at less than normal retail prices; *i.e.*, at "direct factory discounts to 65%."

3. The salesmen who sell respondents' products to the consuming public are factory demonstrators or representatives.

4. The salesmen who sell respondents' products to the public are "Safety Specialists" and have had special training in safety and safety procedures.

5. Infant fatalities caused by structural defects in conventional high chairs are a frequent occurrence.

6. The life of the prospect's child is endangered by the use of conventional high chairs.

PAR. 5. In truth and in fact:

1. Respondents' products are not, and never have been, recommended or endorsed by leading hospitals, doctors, nurses and pediatricians.

2. Respondents' products are not sold at less than normal retail or discount prices. To the contrary, their products are sold to consumers at prices approximately 100 percent higher than the prices paid by the franchisees or distributors who purchase the products direct from the respondents and therefore such products are sold to consumers at normal or above normal markups.

3. The salesmen are not employed by respondents as factory demonstrators or representatives, but are either franchisees or distributors of respondents or are salesmen for such franchisees or distributors.

4. The salesmen have no special training which would entitle them to be called "Safety Specialists."

5. Infant fatalities caused by structural defects in conventional high chairs are a relatively infrequent occurrence.

6. The life of the prospect's child is not endangered by the use of all conventional high chairs.

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

PAR. 6. Respondents by furnishing their franchisees and distributors with sales and promotional materials have thereby placed in the hands of such franchisees and distributors, the means and instrumentalities by and through which they may mislead the public in the manner and as to the things hereinabove alleged. Respondents' franchisees and distributors have used said promotional materials in the course of sales presentations in the homes of prospective purchasers of respondents' products.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by the respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial

quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in 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, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Guild Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 230-23rd St. S., St. Petersburg, Fla.

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

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

ORDER

It is ordered, That respondents Guild Industries Corp., a corporation, its successors and assigns, and its officers, and Martin Byrd, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through franchisees or licensees, in connection with the advertising, offering for sale, sale or distribution of baby furniture or other articles of merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

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

a. Their products have been recommended by leading hospitals, doctors, nurses and pediatricians; or misrepresenting in any manner the endorsement of their products.

b. Respondents' products are sold at direct factory discounts or at less than normal retail prices or at discount prices; or misrepresenting in any manner the savings that consumers will obtain by purchasing respondents' products.

c. Their franchisees and distributors and the agents, representatives and salesmen thereof are direct factory demonstrators or representatives; or misrepresenting in any manner the employment status of persons selling respondents' products to the consuming public.

d. Their franchisees and distributors and the agents, representatives and salesmen thereof are safety specialists and have had special training in safety procedures; or misrepresenting in any manner the qualifications of persons engaged in the sale of respondents' products to the consuming public.

e. Infant fatalities caused by structural defects in conventional high chairs are a relatively frequent occurrence.

f. The lives of children are endangered by the use of conventional high chairs.

2. Inducing the purchase of respondents' products by employing scare tactics through the preparation and dissemination of sales and promotional materials, newspaper clippings and accident pictures which may tend to or do unduly instill fear in members of the purchasing public as to the dangers of the use of conventional high chairs; or misrepresenting in any manner the safety of competitors' products.

Provided, however, That respondents may make available to prospective customers reports or publications of Federal, State or local government agencies or other official and recognized organizations devoted to consumer safety, and which publications and reports are not more than three (3) years old when used.

3. Supplying to or placing in the hands of respondents' distributors, franchisees or salesmen, brochures, sales materials, flip-charts, slides or any other advertising or promotional materials which are intended for use or which may be used in connection with the sales of respondents' products to the consuming public and which contain any of the representations prohibited in Paragraphs 1 and 2 hereof.

It is further ordered, That respondents herein shall forthwith distribute a copy of this order to each of their officers and to respondents' present and future representatives, distributors, franchisees and dealers engaged in the sale of respondents' products, and secure from each of such persons a signed statement acknowledging receipt of said order.

It is further ordered, That the respondents herein shall direct all of their distributors, franchisees or dealers, to remove and destroy or return to respondents all brochures, sales manuals, flip-charts, or any other advertising materials disseminated to them by the respondents, as described in Paragraph 3 above, of this order and which contain any of the representations prohibited in Paragraphs 1 and 2 above of this order; and in the event any such distributor, franchisee or dealer refuses to comply therewith respondents shall in that event cease to furnish and supply their products to such distributor, franchisee or dealer for resale to the public until such time as compliance with this requirement is obtained.

It is further ordered, That:

(a) Respondents herein shall notify all of their distributors, franchisees, or dealers that respondents are obligated by this order to cease to furnish and supply their products for resale to the public by any distributor, franchisee, or dealer who fails to comply with the requirements of the Federal Trade Commission's Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. §429, 37 Fed. Reg. 22934, which is herein incorporated by reference;

(b) In the event that any such distributor, franchisee, or dealer refuses or fails to comply with the requirements of the aforesaid Trade Regulation Rule, respondents shall in that event cease to furnish and supply their products to such distributor, franchisee, or dealer for resale to the public until such time as compliance with the requirements of said Trade Regulation Rule is obtained.

It is further ordered, That respondents shall maintain, for at least a two (2) year period, copies of all literature, brochures, visual aids and any other sales or promotional materials used in connection with the promotion or sale of respondents' products, to include copies of any materials made available or distributed to consumers in the course of such promotion or sale; and such materials shall be made available to

Federal Trade Commission representatives for inspection upon request in writing or by visitation during respondents' regular business hours.

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

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

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

IN THE MATTER OF

S. SCHEINFELD & SON, INCORPORATED, ET AL.

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

Docket C-2731. Complaint, Sept. 29, 1975-Decision, Sept. 29, 1975

Consent order requiring a South Kearny, N.J., wholesale dealer in wool blend and textile fabrics, among other things to cease falsely and deceptively labeling wool and textile products; and to notify those that purchased subject products that they were mislabeled. Further, respondents are required to discontinue substituting their labels for those on textile fabrics they purchase for resale unless they comply with provisions of the Textile Fiber Products Identification Act.

Appearances

For the Commission: *James Manos.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the

Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S. Scheinfeld and Son, Incorporated, a corporation and Joseph Scheinfeld, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent S. Scheinfeld and Son, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Jacobus Ave., Tompkins Terminal Bldg. #10, South Kearny, N.J.

Respondent Joseph Scheinfeld is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents are engaged in the business of purchasing fabrics from various sources and selling such fabrics in the various States.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely fabrics, which contain substantially different types of fibers than those represented.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely fabrics, with labels which failed to disclose:

1. The true generic names of the fibers present therein.
2. The true percentages of the fibers present by weight.

PAR. 5. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act, have caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 6. Respondents, in substituting a stamp, tag, label, or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act, have not kept such records as would show the information set forth on the stamp, tag, label, or other identification that was removed, and the name or names of the person or persons from whom such textile fiber products were purchased in violation of Section 6(b) of said Act.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 9. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool fabrics stamped, tagged, labeled or otherwise identified by respondents as "100% wool," whereas in truth and in fact, said products contained substantially different fibers and amounts of fiber than represented.

PAR. 10. Certain of said products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form prescribed by the rules and regulations promulgated under said Act.

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

PAR. 11. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification 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 S. Scheinfeld and Son, Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal place of business located at Jacobus Ave., Tompkins Terminal Bldg. #10, South Kearny, N.J.

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

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 S. Scheinfeld and Son, Incorporated, a corporation, its successors and assigns, and its officers, and Joseph Scheinfeld, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original State or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous

manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce, and prior to the time such textile fiber product is sold and delivered to the ultimate consumer without substituting therefor labels conforming to Section 4 of said Act and the rules and regulations promulgated thereunder and in the manner prescribed by Section 5(b) of the Act.

C. Failing to maintain and preserve, as required by Section 6(b) of the Textile Fiber Products Identification Act, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act.

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

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

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

It is further ordered, That respondents notify by delivery of a copy of this order by registered mail, each of their customers that purchased the textile and wool products which gave rise to this complaint of the fact that such products were misbranded.

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

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

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

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

IN THE MATTER OF

ANTONOVICH BROS., INC., ET AL.

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

Docket C-2732. Complaint, Sept. 29, 1975-Decision, Sept. 29, 1975

Consent order requiring a New York City manufacturer, wholesaler and retailer of fur coats and other fur garments, among other things to cease misbranding and mislabeling their fur products in violation of the Fur Products Labeling Act.

Appearances

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Antonovich Bros., Inc., a corporation, and Daniel Antonovich and David Antonovich, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated

under the Fur Products Labeling 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 Antonovich Bros., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Daniel Antonovich and David Antonovich are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers, wholesalers and retailers of fur products with their office and principal place of business located at 333 Seventh Ave., New York, N.Y.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce" "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder. Among such misbranded fur products, but not limited thereto, were fur products without labels as required by said Act.

PAR. 4. Certain of said products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with rules and regulations promulgated thereunder in the following respects:

(a) The term "natural" was not used on labels to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said rules and regulations.

(b) Required item numbers were not set forth on labels, in violation of Rule 40 of said rules and regulations.

(c) The true animal name of the fur used in such fur products was not shown on labels in violation of Rule 5 of said rules and regulations.

(d) Required information on labels was described in abbreviated

form and not spelled out fully, in violation of Rule 4 of said rules and regulations.

(e) Required information on labels was entered in handwriting in violation of Rule 29 of said regulations.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Antonovich Bros., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 333 Seventh Ave., New York, N.Y.

Respondents Daniel Antonovich and David Antonovich are officers of said corporation. They formulate, direct and control the acts,

practices and policies of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That the respondents Antonovich Bros., Inc., a corporation, its successors and assigns, and its officers, and Daniel Antonovich and David Antonovich, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary or other device in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the transportation or distribution in commerce, of any fur, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the information required to be disclosed on a label under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on a label the item number or mark assigned to such fur product.

4. Failing to set forth on a label the true animal name of the fur used in such fur product.

5. Setting forth information required under the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form on a label pertaining to such fur product.

6. Setting forth required information on a label in handwriting.

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. Such notice shall include each individual respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

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

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

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

IN THE MATTER OF

FOOD FAIR STORES, INC., ET AL.

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

Docket 8935. Complaint, July 30, 1973–Decision, Sept. 30, 1975.

Consent order requiring Amterre Development, Inc., a Bala-Cynwyd, Pa., shopping center developer, among other things to cease maintaining resale prices, discouraging discount advertising and selling, and denying competitive prices to the public through the insertion of restrictive provisions in leases and agreements with shopping center tenants.

Appearances

For the Commission: *Jonathan E. Gaines* and *Maynard F. Thompson.*

For the respondents: *Alex Akerman, Shipley, Akerman, Stein & Kaps*, Wash., D.C. *Warren J. Kaps, Stein & Rosen*, New York City. *Glenn A. Mitchell, Stein, Mitchell & Mezines*, Wash., D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now

violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), and it appearing to this Commission that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint stating its charges with respect thereto as follows:

1. A. Respondent Food Fair Stores, Inc., (Food Fair) is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 3175 John F. Kennedy Blvd., Philadelphia, Pa.

Food Fair is engaged in, among other things, the management and operation of a retail food chain, the retail sale of food and other merchandise and, through its subsidiary Amterre Development, Inc. (formerly Food Fair Properties, Inc.,) and other subsidiaries, the development, construction and management of shopping centers. In 1971 Food Fair was the fourth largest retail food chain in the United States with sales of approximately $2 billion.

B. Respondent Amterre Development, Inc. (Amterre) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2 Decker Square, Bala-Cynwyd, Pa.

Amterre was formed by and is controlled by Food Fair for the purpose of developing, constructing and managing shopping centers. Food Fair has the exclusive right to the space set aside for a supermarket in each shopping center developed by Amterre. No other supermarket is permitted in these shopping centers without Food Fair's consent.

Amterre, with assets in 1971 of $230 million and a total income of $18 million, is the largest publicly-held shopping center development company in the United States. Through Amterre, Food Fair is presently operating 48 shopping centers throughout the Eastern portion of the United States and 36 free-standing commercial properties with total gross leasable area in excess of 9,000,000 square feet.

2. In the course and conduct of their business, respondents maintain and have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent Food Fair owns and operates in excess of six hundred food store units and department stores located in sixteen different States for which it purchases for resale, and through which, it sells goods in interstate commerce. Amterre, on its own behalf, and on behalf of Food Fair, owns and operates shopping centers in nine different States. In so doing Amterre has been, and is now, engaged in interstate lease negotiations and transactions with its tenants and prospective tenants.

3. Except to the extent that competition has been hindered, lessened and eliminated as set forth in this complaint, respondents Food Fair and Amterre, in the course and conduct of their business of selling, at retail, food and other merchandise, and of developing, constructing, and managing shopping centers, have been and are now in substantial competition with other corporations, individuals and partnerships.

4. In the course and conduct of their business, respondents are and have been engaged in unfair methods of competition and unfair acts and practices in commerce in that they have negotiated, executed and enforced and are now negotiating, executing and enforcing leases which control or eliminate discount sales, exclude discount stores and tend to establish and maintain prices at which or the price ranges within which shopping center tenants and their competitors must sell their merchandise. Additionally, respondents' lease provisions encourage each tenant to enforce price restrictions against its competitors. Pursuant to such lease provisions, respondents' tenant, The Felsway Corporation, has brought suit to enjoin price cutting competitors and eliminate price competition.

5. Through the negotiation, utilization and enforcement of these lease provisions, among others, respondents have entered into agreements which tend to fix prices and which otherwise restrain trade and have engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

The Federal Trade Commission having issued a complaint which charges respondents Food Fair Stores, Inc. and Amterre Development Inc., with violating the Federal Trade Commission Act, and

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

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

217-184 O - 76 - 46

1. Respondent Amterre Development 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 in Bala-Cynwyd, Pa.

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

ORDER

I

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

A. The term "respondent" refers to Amterre and its subsidiaries, officers, agents, representatives, employees, successors, and assigns, in their capacities as such. "Subsidiary" means a person, entity or corporation in which Amterre has voting control.

B. The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area, which the development is intended to serve, and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

C. The term "tenant" refers to any occupant or potential occupant of retail space in any of respondent's shopping centers, whether as a lessee or owner of such space.

D. The term "retailer" refers to a tenant which sells merchandise or services to the public.

E. The terms "range of prices" and "price range" refer to such descriptive words as "popular priced," "medium priced," "high priced," "merchandise ranging in price from $90 to $190," and "the sale of merchandise at prices less than $15." The terms "range of prices" and "price range" do not include references to the general quality of merchandise or services, explicitly characterized as such, that the tenant principally will offer.

F. The term "price line" refers to descriptive words identifying a particular retailer as an example of a category of merchants selling merchandise within a generally identifiable range of prices.

II

A. *It is ordered*, That respondent cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

1. specifies that any retailer in any of respondent's shopping

centers shall or shall not sell or offer to sell merchandise or services at any particular price or within any range of prices;

2. specifies that any retailer in any of respondent's shopping centers shall or shall not sell or offer to sell designated price lines of merchandise;

3. specifies that any retailer in any of respondent's shopping centers shall not be a discounter or sell or offer to sell merchandise or services at discount prices;

4. specifies the content of or prohibits any type of advertising by a retailer, other than advertising within any of respondent's shopping centers, except that respondent may require a tenant to include the name, insignia, or other identifying mark of any of respondent's shopping centers in advertising pertaining to the tenant's store in any of respondent's shopping centers.

B. *It is further ordered*, That respondent will within thirty (30) days after service of this order mail a copy of Letter "A," attached hereto, to all tenants of its shopping centers whose leases make reference in the use clauses to the price or quality of the merchandise or services to be sold.

C. *It is further ordered*, That respondent cease and desist from entering into any agreement, directly or indirectly, with any tenant that said tenant may:

1. specify or control or may require respondent to specify or control prices, price ranges, or price lines of merchandise or services sold by any other retailer;

2. control or may require respondent to control discounting by any other retailer; or

3. exclude any retailer from any of respondent's shopping centers by reason of such retailer's discount selling or discount advertising.

D. *It is further ordered*, That respondent advise the Commission in writing within sixty (60) days of any occasion that:

1. a tenant disapproves the admission into any of respondent's shopping centers of any other retailer;

2. a tenant refuses to approve the renewal of another retailer's lease in any of respondent's shopping centers;

3. a tenant approves the admission of another retailer into any of respondent's shopping centers subject to conditions imposed by the tenant relating to the pricing, price ranges, price lines, trade names, store names, trademarks, brands or lines of merchandise, or the discounting practices or methods of such other retailer; or

4. a tenant enters into an agreement with respondent to become a tenant in any of respondent's shopping centers on condition that respondent refuse to renew the lease of another retailer.

III

It is further ordered, That respondent shall:

A. within thirty (30) days after service of this order upon respondent, notify each of its tenants of this order by providing each tenant with a copy thereof by registered or certified mail;

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

C. notify the Commission at least thirty (30) days prior to any change in the corporate respondent which may affect compliance obligations arising out of this order.

IV

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed with respect to respondent Food Fair Stores, Inc.

LETTER "A"

[On Official Amterre Development Inc. stationery]

Gentlemen:

Amterre Development Inc. has consented to the issuance by the Federal Trade Commission of an order which, among other things, prohibits Amterre from specifying that its tenants shall or shall not sell merchandise or services at any particular price or within any range of prices, and that its tenants shall or shall not sell designated price lines of merchandise. A copy of the order is enclosed.

Your lease describes the merchandise or services you are to sell in terms such as "popular priced," "medium priced," "high priced," "Medium to better quality," or the like. Please be advised that such language is intended only as a description of the general quality of the merchandise or services you sell. It is not intended and will not be enforced to affect the retail selling price of your merchandise or services. Pursuant to the terms of the order you are free to set the prices for your merchandise and services and are not required to adhere to any particular price, range of prices, or price lines expressed or implied in your lease or in any other agreement with the shopping center.

This letter shall not operate as a waiver of any rights which Amterre may now have to require you, except as your lease otherwise provides, to sell merchandise or services at a general quality level or levels.