

IN THE MATTER OF

STIHL, INCORPORATED, ET AL.

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

Docket 9165. Complaint, March 7, 1983—Decision, June 6, 1983

This consent order requires a manufacturer and seller of power tools and its advertising agency, among other things, to cease representing that the Stihl 015 AV chain saw has been top-rated by a leading consumer publication; that power was one of the factors considered in the rating; and that Stihl chain saws start faster and run smoother than other chain saws. The order prohibits respondents from making false or unsubstantiated representations concerning the performance or durability of any power tool, and requires them to possess and rely upon a reasonable basis when making such claims. Further, the companies are barred from misrepresenting the purpose or conclusion of any test or evaluation, and are required to retain documentation for performance-related claims for a period of three years.

Appearances

For the Commission: *Andrew Sacks* and *T. Bringier McConnell*.

For the respondents: *William I. Bandas*, Richmond, Va. and *Stephen Wainger, Seawell, Dalton, Hughes & Timms*, Norfolk, Va.

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

PARAGRAPH 1. Respondent Stihl, Inc. ("Stihl"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business is located at 536 Viking Drive, Virginia Beach, Virginia. Respondent Stuart Ford, Inc. ("Stuart Ford"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 1108 E. Main Street in Richmond, Virginia.

PAR. 2. Stihl is now and at all times relevant to this complaint has

been engaged in the marketing and sale of chain saws and other power tools, and power tool accessories. Stuart Ford is an advertising agency and has prepared, created and placed advertisements for Stihl chain saws and other Stihl power tools.

PAR. 3. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional material, including but not limited to, the advertising referred to herein, to promote the sale of Stihl chain saws and other Stihl power tools.

PAR. 4. Respondents maintain and have maintained a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of promoting the sale and distribution of Stihl chain saws, respondents have disseminated and caused the dissemination of advertising in national magazines distributed by mail and across state lines, and in television stations located in various states, having sufficient power to carry such broadcasts across state lines.

PAR. 6. Typical statements and representations in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C, D, and E.

PAR. 7. Through the use of the statements referred to in Paragraph Six and other statements contained in advertisements not specifically set forth herein, respondents have represented, and now represent directly or by implication, the following claims:

a) In 1980 and 1981, the current Stihl model 015 AV chain saw was rated best of all home saws tested by a leading consumer publication; and that "power" was one of the factors considered in this rating.

b) Stihl chain saws start faster than all other chain saws on the market.

c) Stihl chain saws are the smoothest running chain saws on the market.

d) All Stihl power tools last at least twice as long as any other power tool on the market.

PAR. 8. Through the use of the advertisements referred to in Paragraph Six, and other advertisements not specifically set forth herein, respondents have represented, directly or by implication, that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Eight at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making such representations, for the following reasons:

a) (1) The test by a "leading consumer publication" was three years old at the time the claim was first made and the results were not properly applicable to the advertised models, because, inter alia, significant changes affecting performance were made in the tested competing saws.

(2) Power was not one of the factors considered in the test.

b) The data which Stihl relied upon do not show that Stihl saws start faster than all other saws on the market.

c) The data which Stihl relied upon do not show that Stihl saws run smoother than all other saws on the market.

d) The data which Stihl relied upon do not show that all Stihl power tools last twice as long as any other power tools on the market.

Therefore, respondents' making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 9. At the time respondents made the representations alleged, respondents did not possess and rely upon a reasonable basis for making such representations. Therefore, respondents' making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 10. The representations recited in Paragraph Eight (a), (b) and (c) are false, for the following reasons:

(a) (1) The rating by a consumer publication, published in 1977, did not involve current model chain saws in 1980 and 1981.

(2) The rating by a consumer publication, published in 1977, was not properly applicable to current model chain saws in 1980 and 1981.

(3) Power was not one of the factors considered in the test.

(b) Stihl chain saws do not start faster than all other chain saws on the market.

(c) Stihl chain saws are not the smoothest running chain saws on the market.

As the representations referred to above are false, the advertisements referred to above were therefore unfair and deceptive.

PAR. 11. Respondent Stuart Ford knew or should have known that the aforesaid advertisements were false, and therefore unfair and deceptive.

PAR. 12. The use by respondents of the aforesaid unfair and deceptive advertisements and the placement of them in the hands of others who have used them, have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said representations are true and complete, and have had the capacity and tenden-

cy to induce such persons to purchase Stihl chain saws by reason of said erroneous and mistaken belief.

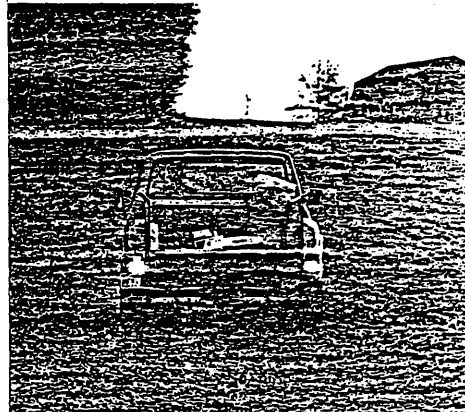
PAR. 13. The aforesaid acts or practices of respondents, herein alleged as aforesaid, were and are all to the prejudice and injury of the public, and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

Complaint

101 F.T.C.

EXHIBIT A

FARMERS START BEFORE EVERYONE ELSE. SO DO STIHL FARM SAWS.



Stihl® farm saws are designed to start every time, in sweltering heat or freezing cold. And they last. Not just a season, but year after year.

Take the Stihl Farm Boss™, our biggest, most popular farm saw. With high-voltage ignition, a super-efficient combustion chamber, and a cooling system that virtually eliminates vapor lock, it has starting power that'll get you going under any cutting conditions.

Or the new 032. Like all our farm saws, it's made to be trouble free. It has longer wearing parts that seldom break down, and automatic oiling so you never have to manually lubricate a chain.

And the Stihl Wood Boss™. It always gets the job done. Because every Stihl is built to last at least twice as long as any other saw you can buy. So for a farm saw you can depend on, get a Stihl. It's the one saw that'll help you get an earlier start.

And an earlier finish.

For your local dealer's name call toll-free 1-800-528-0050 Ext. 1430. In Arizona call 1-800-352-0458 Ext. 1430.

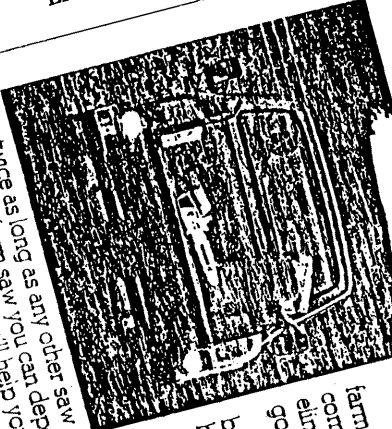


STIHL
The World's Largest Selling Chainsaw.

Complaint

EXHIBIT B

FARMERS START BEFORE EVERYONE ELSE. SO DO STIHL FARM SAWS.

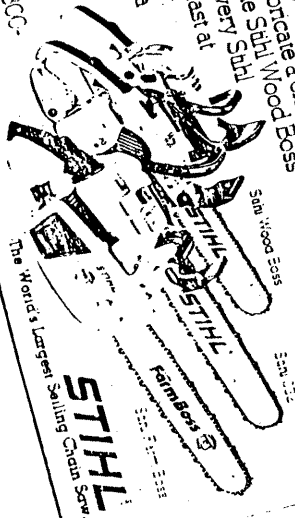


Stihl farm saws are designed to start every time, in
sweating heat or freezing cold. And they last. Not just a
season but year after year.

Take the Stihl Farm Boss™ our biggest, most powerful
farm saw. With high-voltage ignition, a super-efficient
combustion chamber, and a starting power that gets you
going under any cutting conditions.

Or the new 032. Like all our farm saws, it's made to
be trouble free, and automatic. It always gets the job done.
break down, and automatic. It always gets the job done.
manually lubricate a chain.

And the Stihl Wood Boss™. It always gets the job done.
Because every Stihl
is built to last at



Stihl
Farm Boss
The World's Largest Selling Chain Saw

So for a farm saw that'll help you get an
earlier start.
And an earlier finish.
For your local dealer's name call toll-free
1-800-328-6050 Ext. 130
352-2458 Ext. 130
For more information call 1-800-328-6050

Complaint

101 F.T.C.

EXHIBIT C

IF YOUR TOOLS ARE LESS THAN PAMPERED THEY'D BETTER NOT BE LESS THAN STIHL.[®]



Good tools, muddy fields, freezing cold or blistering heat, all through handling can stop a tool before it starts, and keep a job from getting done unless your tools are Stihl.[®]

All our tools are built to last at least twice as long as any other tools you can buy. And start under any conditions. So, no matter how long a job lasts, your Stihl tools will last longer.

That means less worry, less maintenance, and less downtime for you. So if your tools have it tough, they'd better not be less than Stihl.

Stihl Inc., 1981. For sales and service, see the Yellow Pages under "saws." For your local dealers name call toll-free 1-800-528-6050. Ext. 1430. In Arizona 1-800-352-0458. Ext. 1430.

STIHL[®]
The World's Largest Selling Chain Saw.

EXHIBIT D

CAN THE WOMAN WHO PICKS OUT YOUR TIES BE TRUSTED TO PICK OUT YOUR CHAIN SAW?

Of course. But unless your lady is a woodcutter, how can she be expected to know that a bargain saw is not necessarily a long lasting one? You can put your mind at ease, if you simply ask her for a Stihl® chain saw.

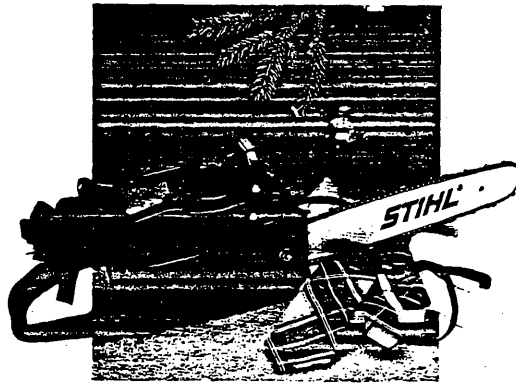
Stihl is the world's largest selling chain saw because Stihl saws start faster, run quieter and smoother, and hold up longer than other saws.

Each of the over eight thousand Stihl

dealers throughout the country services the saws he sells. You won't find that kind of support when your bargain saw quits.

And considering that you get over \$45 worth of accessories with the purchase of any 010 or 015 "Bonus Special," Stihl is also capable of cutting a good deal. So, if you want a chain saw for Christmas, you've basically got two choices. Either ask your wife for a Stihl.

Or brace yourself for a bargain.



STIHL

The World's Largest Selling Chain Saw

BIG DEAL FROM STIHL. With the purchase of any 010 or 015 "Bonus Special," you receive over \$45 worth of accessories in complimentary dealers. Offer includes: tracking, carrying case, loose cutting chain, bar groove cleaning tool, the new handle wedge, 3/8" nut wrench, oil wrench, "kickback" manual, and handy booklet about firewood cutting. (Standard equipment with all Stihl saws.)

For your local dealer's name call toll-free 1-800-528-6050. Ext. 430. In Arizona call 1-602-955-1455. Ext. 430. For sales and service see the Yellow Pages under "Saws."

Complaint

101 F.T.C.

EXHIBIT E

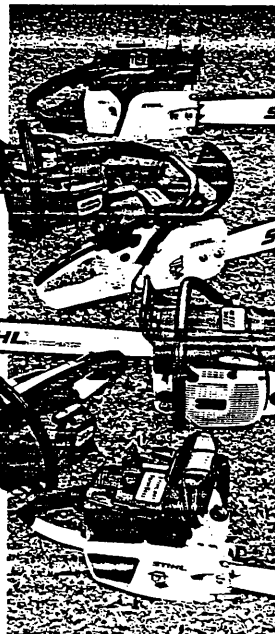
COMPARE THESE TO ANY OTHER SAWS AND LET THE CHIPS FALL WHERE THEY MAY.

Once you know one chain saw from another,
you'll know why Stihl® is the largest selling chain saw in the world.

The Stihl 010AV. Light weight homeowner's saw, built to professional standards. 2.3 cubic inches of power packed in an almost indestructible magnesium housing. Comes with Stihl's anti-vibration system. The quietest gas chain saw on the market today.

The Stihl 038AVE. New Stihl pro logging saw, designed to perform especially well — even in hot climates. Heat-resistant features include special air-flow channels, a two stage air filter, and a carburetor that significantly reduces vapor lock.

The Stihl 015 AV. Rated by a leading consumer publication as best of all home saws tested for combined power, performance, noise, cutting speed, balance, and fuel efficiency. The ideal saw for any job around the house.



The Stihl 032AVE. Stihl's ultimate mid-size saw. Strong enough for professional, forestry, contracting and farm use. Incorporates Stihl's best pro features, such as anti-vibration and electronic ignition. The newest and most powerful mid-size saw Stihl makes.

The 028 Stihl Wood Boss.™ Stihl's most advanced mid-size saw in a popular price range. The only Stihl saw of its size with single-lever Master Control™, combining choke, start, and stop. Great for serious firewood cutting.

The Stihl Farm Boss.™ Tough, reliable saw built for a farmer's long hours and demanding jobs. Strong enough for medium logging, yet light enough for limbing, clearing, and thinning. A sure-starting, time-proven favorite.

STIHL®

The World's Largest Selling Chain Saw

For the name of the Stihl dealer nearest you, call toll-free 800-528-6780. Ext. 4430 in Arizona call 800-350-0458. Ext. 4430. Or look in the Yellow Pages under "Saws."

DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(f) of its Rules;

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

1. Respondent Stihl, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 536 Viking Drive, in the City of Virginia Beach, State of Virginia. Respondent Stuart Ford, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 1108 East Main Street, in the City of Richmond, State of Virginia.

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

ORDER

I

It is ordered, That respondent Stihl, Inc., ("Stihl"), and Stuart Ford, Inc., ("Stuart Ford"), corporations, and their successors and assigns, 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 any chain saw for consumer or commercial use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that:

A. (1) The current Stihl model 015 AV chain saw is rated best of all home saws tested by a leading consumer publication;

(2) Power was one of the factors considered in the test by a leading consumer publication.

B. Stihl's chain saws start faster than all other chain saws on the market.

C. Stihl's chain saws are the smoothest running chain saws on the market.

II

It is further ordered, That respondents, their successors and assigns, 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 any power tool, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, results, current validity, reliability, or conclusions of any test or evaluation.

III

It is further ordered, That respondents, their successors and assigns, 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 any power tool, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representations, directly or by implication,

regarding the performance or durability of any such product unless, at the time the representation is made, respondents possess and rely upon a reasonable basis. For purposes of this Order a reasonable basis shall consist of one or more competent tests or other competent and reliable evidence that substantiates the representation.

Provided, however, That in circumstances where Stuart Ford relied upon scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, which was not directly or indirectly prepared, controlled, or conducted by respondent Stuart Ford, Inc., it shall be an affirmative defense to an alleged violation of Part III of this Order for Stuart Ford to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it had a reasonable basis in accordance with Part III of this Order. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such evidence upon which the opinion is based.

IV

It is further ordered, That respondents, for the period of three years after they last disseminated the advertisements of the products covered by this Order, shall retain all test results, data and other documents or information on which they relied for such advertisements and all documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in respondents' possession during either creation or dissemination of such advertisements. Such records shall be available for inspection by the staff of the Commission upon reasonable notice.

V

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

VI

It is further ordered, That the respondents shall forthwith distribute a copy of this Order to each of its operating divisions, and to each

of its officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements.

VII

It is further ordered, That respondents shall, within sixty (60) days after service of this Order and annually thereafter for three (3) years, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

IN THE MATTER OF

HERMAN MILLER, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC.2(a) OF THE CLAYTON ACT

Docket C-1248. Consent Order, June 30, 1967—Modifying Order, June 9, 1983

This order reopens the proceeding and modifies the Commission's order issued on June 30, 1967 (71 F.T.C. 1579), so as to allow the company to specify the customers to which its dealers can serve.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JUNE 30, 1967

By a petition dated January 11, 1983, and a supplement thereto dated February 18, 1983, respondent Herman Miller, Inc. ("Herman Miller") requests that the Commission reopen the proceeding in Docket No. C-1248 and delete subparagraphs 1., 2. and 3.(a) of the second unnumbered paragraph of the order issued by the Commission on June 30, 1967 [71 F.T.C. 1579]. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Herman Miller's request and supporting materials, and other relevant information, the Commission now finds that changed conditions of fact and law, and the public interest, warrant reopening and modification of the order.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that subparagraphs 1., 2. and 3.(a) of the second unnumbered paragraph of the Commission's order be, and they are hereby, deleted.

Complaint

101 F.T.C.

IN THE MATTER OF
CHICAGO METROPOLITAN PONTIAC DEALERS'
ASSOCIATION, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND THE TRUTH IN LENDING ACT

Docket C-3110. Complaint, June 9, 1983—Decision, June 9, 1983

This consent order requires a Wheaton, Ill. Pontiac dealers' association, among other things, to cease failing to make clear and conspicuous credit disclosures in T.V. advertisements promoting consumer credit. The order requires that credit terms be displayed in the video portion of the ad for at least five seconds, and that rates of finance charges be quoted as an "annual percentage rate." The association is also prohibited from using certain credit terms in advertisements promoting credit sales unless those advertisements also include statutorily required information in the manner prescribed by the Truth in Lending Act and its implementing Regulation Z.

Appearances

For the Commission: *George R. Bellack.*

For the respondent: *David G. Mountcastle, Wheaton, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the Chicago Metropolitan Pontiac Dealers' Association, Inc. (hereinafter referred to as "respondent"), a corporation, has 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 Chicago Metropolitan Pontiac Dealers' Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 208 North West Street, P.O. Box 48, Wheaton, Illinois.

PAR. 2. Respondent's members are now, and for some time have been, engaged in the business of offering for sale and sale of new and

used automobiles to the public at retail. In the ordinary course and conduct of their business, respondent's members regularly arrange for the extension of consumer credit, as "arrange for the extension of credit" and "consumer credit" are defined in Sections 226.2(h) and 226.2(p) of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.¹

PAR. 3. In the ordinary course and conduct of its business, respondent caused advertisements, as "advertisement" is defined in Section 226.2(d) of Regulation Z, to be broadcast on television at various times during January and February of 1981. Certain of these advertisements were designed to aid, promote, or assist directly or indirectly the extension of consumer credit by its members, as "consumer credit" is defined in Section 226.2(p) of Regulation Z.

PAR. 4. In certain of the advertisements referred to in Paragraph Three above, respondent used an advertising format in which the credit terms required by Section 226.10(d)(2) of Regulation Z were presented in the video portion of the advertisement. The required disclosures were displayed for an insufficient time for the viewer to read the credit terms, thereby detracting from the clarity and conspicuousness of the required disclosures.

PAR. 5. In certain of the advertisements referred to in Paragraph Three above, the annual percentage rate was not stated as "annual percentage rate," using that term, as required by Section 226.10(d)(1) of Regulation Z.

By means of such advertisements, respondent Chicago Metropolitan Pontiac Dealers' Association, Inc. violated Section 226.10(d)(2) of Regulation Z, which requires credit disclosures to be made clearly and conspicuously, and Section 226.10(d)(1) of Regulation Z which requires the finance charge to be stated as "annual percentage rate", using that term. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108(c) thereof, respondent has violated the Federal Trade Commission Act.

DECISION AND ORDER

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

¹ All reference to the Truth in Lending Act and Regulation Z contained in this Complaint shall refer to the Truth in Lending Act as amended to March 23, 1976 and Regulation Z as amended to March 23, 1977.

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Truth in Lending Act and the implementing regulations promulgated thereunder and of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described 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 Chicago Metropolitan Pontiac Dealers' Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 208 North West Street, P.O. Box 48, Wheaton, Illinois.

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

ORDER

I. *It is ordered*, That respondent Chicago Metropolitan Pontiac Dealers' Association, Inc., its successors and assigns, member dealers, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any television advertisement to promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act, 15 U.S.C. 1601

et seq.,¹ do forthwith cease and desist from:

1. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, unless the following terms are also stated, as required by Section 226.24 (c)(2) of Regulation Z:

- (a) the amount or percentage of the downpayment;
- (b) the terms of repayment; and
- (c) the "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

The terms which are required by Section 226.24(c)(2) of Regulation Z are subject to the general "clear and conspicuous" standard set forth in Section 226.17(a)(1) of Regulation Z and Section 226.24-I of the Official Federal Reserve Board Staff Commentary on Regulation Z.

2. Failing to disclose the terms required by Section 226.24(c)(2) of Regulation Z in the video portion of any television advertisement subject to this order for at least five (5) seconds' duration.

3. Failing in an advertisement which states a rate of finance charge to state the rate as an "annual percentage rate," using that term as required by Section 226.24(b) of Regulation Z.

II. It is further ordered, That:

1. Respondent shall distribute a copy of this order to each person having decision-making authority to determine all or part of the contents of an advertisement which is subject to this order, and to the president or chief executive officer of each of respondent's members and shall secure from each such person a signed statement acknowledging receipt of said order.

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

3. Respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

¹ All references to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980, and Regulation Z as amended to April 1, 1981.

Complaint

101 F.T.C.

IN THE MATTER OF

THE COMPETITIVE EDGE, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND THE TRUTH IN LENDING ACT

Docket C-3111. Complaint, June 9, 1983—Decision, June 9, 1983

This consent order requires an Albuquerque, N.M. advertising agency, among other things, to cease failing to make clear and conspicuous credit disclosures in T.V. advertisements promoting consumer credit. The order requires that credit terms be displayed in the video portion of the ad for at least five seconds, and that rates of finance charges be quoted as an "annual percentage rate." The agency is also prohibited from using certain credit terms in advertisements promoting credit sales unless those advertisements also include statutorily required information in the manner prescribed by the Truth In Lending Act and its implementing Regulation Z.

Appearances

For the Commission: *George R. Bellack.*

For the respondent: *Paull Mines, Poole, Tinnin & Martin, Albuquerque, N.M. and Christopher Smith, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Competitive Edge, Inc. (hereinafter sometimes referred to as "respondent"), a corporation, has 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, The Competitive Edge, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at Number 3 American Financial Center, 2400 Louisiana Boulevard, N.E., Albuquerque, New Mexico.

PAR. 2. Respondent is now, and for some time has been, engaged in the business of creating, producing, and causing dissemination of

advertisements for its clients, as "advertisement" is defined in Section 226.2(d) of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.¹

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent created, produced and caused the dissemination of advertisements to be broadcast on television at various times during January and February 1981. Certain of these advertisements were designed to aid, promote, or assist directly or indirectly the extension of consumer credit, as "consumer credit" is defined in Section 226.2(p) of Regulation Z.

PAR. 4. In certain of the advertisements referred to in Paragraph Three above, respondent used an advertising format in which the credit terms required by Section 226.10(d)(2) of Regulation Z were presented in the video portion of the advertisement. The required disclosures were displayed for an insufficient time for the viewer to read the credit terms, thereby detracting from the clarity and conspicuousness of the required disclosures.

PAR. 5. In certain of the advertisements referred to in Paragraph Three above, the annual percentage rate was not stated as "annual percentage rate," using that term, as required by Section 226.10(d)(1) of Regulation Z.

By means of such advertisements, respondent, The Competitive Edge, Inc. violated Section 226.10(d)(2) of Regulation Z, which requires credit disclosures to be made clearly and conspicuously, and Section 226.10(d)(1) of Regulation Z which requires the finance charge to be stated as "annual percentage rate", using that term. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with Regulation Z constitute a violation of that Act and, pursuant to Section 108(c) thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

¹ All reference to the Truth in Lending Act and Regulation Z contained in this Complaint shall refer to the Truth in Lending Act as amended to March 23, 1976 and Regulation Z as amended to March 23, 1977.

tions promulgated thereunder and of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described 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, The Competitive Edge, Inc., is a corporation Organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at Number 3 American Financial Center, 2400 Louisiana Boulevard, N.E., in the City of Albuquerque, State of New Mexico.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, That respondent The Competitive Edge, Inc., its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any television advertisement to promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*,¹ do forthwith cease and desist from:

¹ All references to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980, and Regulation Z as amended to April 1, 1981.

1. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, unless the following terms are also stated, as required by Section 226.24 (c)(2) of Regulation Z:

- (a) the amount or percentage of the downpayment;
- (b) the terms of repayment; and
- (c) the "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

The terms which are required by Section 226.24(c)(2) of Regulation Z are subject to the general "clear and conspicuous" standard set forth in Section 226.17(a)(1) of Regulation Z and Section 226.24-1 of the Official Federal Reserve Board Staff Commentary on Regulation Z.

2. Failing to disclose the terms required by Section 226.24(c)(2) of Regulation Z in the video portion of any television advertisement subject to this order for at least five (5) seconds' duration.

3. Failing in an advertisement which states a rate of finance charge to state the rate as an "annual percentage rate," using that term as required by Section 226.24(b) of Regulation Z.

II. It is further ordered, That:

1. Respondent shall distribute a copy of this order to the most senior person employed in each of its operating divisions and to each person having decision-making authority to determine all or part of the contents of an advertisement which is subject to this order, and shall secure from each such person a signed statement acknowledging receipt of said order.

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

3. Respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
SCOTT PAPER COMPANY

VACATING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 6559. Modified Order, May 8, 1964—Vacating Order, June 22, 1983*

This order reopens the proceeding and vacates in its entirety the Commission's order issued on May 8, 1964 (65 F.T.C. 638). The Commission has determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding 10 years.

ORDER VACATING CEASE AND DESIST ORDER ISSUED ON MAY 8, 1964

By a petition filed on February 24, 1983, Scott Paper Company ("Scott") requests that the Commission reopen the proceeding in Docket No. 6559 and vacate the order issued by the Commission on May 8, 1964 [65 F.T.C. 638]. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Scott's petition and supporting materials, and other relevant information, the Commission finds that the public interest warrants reopening and vacating the order.

In *Columbian Rope Company*, Docket No. C-1794 [100 F.T.C. 531], the Commission determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years. In most cases, the Commission believes that such prior approval provisions will have served their remedial and deterrent purposes after ten years and that the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time. The perpetual prior approval provision in this case has been outstanding for 18 years. No particular circumstances warrant an exception from this general policy. Therefore, the Commission, in the exercise of its discretion, finds that it is appropriate to vacate the order.

Accordingly, *it is ordered*, that this matter be, and it hereby is reopened and that the order in Docket No. 6559, issued by the Commission on May 8, 1964, be and it is hereby vacated.

* Original Commission Order issued Dec. 16, 1960 (57 F.T.C. 1415).

IN THE MATTER OF

BORG-WARNER CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 8 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9120. Complaint, Nov. 7, 1978—Final Order, June 23, 1983

This order requires Borg-Warner, an automotive replacement parts manufacturer and its competitors, Bosch GmbH and Bosch U.S., among other things, to cease having interlocking directorates for a period of 10 years. The companies are also prohibited from having on their boards any person who is a board member of a competing company whose revenues derived from the relevant product or service market exceeds 5 million dollars; or any individual who fails to provide the statement required by the order. The order further prohibits Hans L. Merkle from serving as director of both Borg-Warner and any Bosch company that is a competitor of Borg-Warner and requires that the companies institute a monitoring program designed to detect unlawful interlocks.

Appearances

For the Commission: *Ann B. Malester, K. Keith Thurman and Sandra G. Wilkof.*

For the respondents: *James M. Johnstone, John B. Wyss and Tom W. Kirby, Kirkland & Ellis, Washington, D.C. and Charles Houchins, in-house counsel, Chicago, Ill., for respondent Borg-Warner Corp. Joseph A. McManus, Susan Rothschild and Allen Russell, Coudert Brothers, New York City, for respondent Robert Bosch Corp. Werner L. Polak, William M. Kelly and Thomas A. Dieterich, Shearman & Sterling, New York City, for respondents Robert Bosch GmbH, Hans L. Merkle and Hans Bacher.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named Respondents have been, and are, in violation of the provisions of Section 8 of the Clayton Act, as amended, 15 U.S.C. 19, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, issues its complaint, stating its charges as follows:

1. Respondent Robert Bosch GmbH (hereinafter "Bosch GmbH") is a limited liability company organized under the laws of the Federal Republic of Germany and has its principal office at Robert-Bosch-Platz 1, D-7016 Gerlingen/Schillerhohe, Federal Republic of Germa-

ny. Bosch GmbH has capital, surplus, and undivided profits aggregating more than one million dollars. Bosch GmbH is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is engaged in or its [2] business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. Bosch GmbH conducts its business in part through subsidiaries or other operating entities. Bosch GmbH is the parent company of "the Bosch Group," which for purposes of this complaint includes the companies named in Paragraphs 2 through 4.

2. Robert Bosch North America, Incorporated (hereinafter "Bosch N.A.") is a Delaware corporation and has its principal office at 2800 25th Avenue, Broadview, Illinois. Bosch N.A. was organized in January, 1977, for the purpose of managing investments in various corporations. Bosch N.A. owns approximately 10 percent of the stock of Borg-Warner Corporation (hereinafter "B-W").

3. SIBA-Elektrik GmbH (hereinafter "SIBA") is a limited liability company organized under the laws of the Federal Republic of Germany and has its principal office at Robert-Bosch-Platz 1, D-7016 Gerlingen/Schillerhohe, Federal Republic of Germany. SIBA is wholly-owned by Bosch GmbH. SIBA serves as a holding company with investments in various affiliates of the Bosch Group and holds the shares of Bosch N.A. in trust for Bosch GmbH as beneficial owner.

4. Respondent Robert Bosch Corporation (hereinafter "Bosch U.S.") is a New York corporation and has its principal office at 2800 25th Avenue, Broadview, Illinois. Bosch U.S. is wholly-owned, directly or indirectly, and wholly controlled by Bosch GmbH. Bosch U.S. has capital, surplus, and undivided profits aggregating more than one million dollars. Bosch U.S. is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is engaged in or its business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

5. Respondent B-W is a Delaware corporation and has its principal office at 200 South Michigan Avenue, Chicago, Illinois. B-W has capital, surplus, and undivided profits aggregating more than one million dollars. B-W is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is engaged in or its business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. [3]

6. Respondent Hans L. Merkle is an individual and resident of the Federal Republic of Germany whose address is Reuerbacher Heide 58, D-7000 Stuttgart 1, Federal Republic of Germany. Dr. Merkle is

chairman of the board of management of Bosch GmbH and a member of the boards of directors of both Bosch U.S. and B-W.

7. Respondent Hans Bacher is an individual and resident of the Federal Republic of Germany whose address is Stuttgarter Strasse 122, D-7250 Leonberg, Federal Republic of Germany. Dr. Bacher is a member of the board of management of Bosch GmbH and a member of the boards of directors of both Bosch U.S. and B-W.

8. On January 11, 1977, Bosch GmbH and B-W signed an agreement whereby Bosch GmbH or its designee would purchase approximately ten (10) percent of the stock of B-W. B-W agreed that its management would recommend to its board of directors that two representatives designated by Bosch GmbH and acceptable to the management of B-W be included in the next proxy statement as nominees for the board of directors of B-W. B-W and Bosch GmbH further agreed that they intend for Bosch GmbH to have two of its designated representatives serving on the board of directors as long as Bosch GmbH or its designee owns nine percent or more of the stock of B-W and one designated representative if Bosch GmbH should own more than five percent and less than nine percent of the stock of B-W.

9. On February 10, 1977, Bosch GmbH wrote B-W that it had designated Hans L. Merkle and Hans Bacher to serve on B-W's board of directors. On February 16, 1977, Bosch N.A. purchased two million shares of B-W, which constitutes approximately ten percent of B-W's stock, for \$62,900,000. On or about April 26, 1977, pursuant to the agreement between Bosch GmbH and B-W, Dr. Merkle and Dr. Bacher became directors of B-W.

10. The businesses of both Bosch GmbH and Bosch U.S. include the sale in or affecting commerce of, among other products, automotive ignition parts, wire and cable, carburetors, carburetor kits, automotive test equipment, automotive air conditioner compressors, hydraulic valves and hydraulic gear pumps and motors. [4]

11. The business of B-W includes the sale in or affecting commerce of, among other products, automotive ignition parts, wire and cable, carburetors, carburetor kits, automotive test equipment, automotive air conditioner compressors, hydraulic valves and hydraulic gear pumps and motors.

12. Bosch GmbH and B-W, by the nature of their automotive parts business, including ignition parts, wire and cable, carburetors, carburetor kits, automotive test equipment, automotive air conditioner compressors, and certain non-automotive business such as hydraulic valves, hydraulic gear pumps and motors and the location of their operations with respect to said products, are competitors of each other.

13. (a) The elimination of competition by agreement between Bosch

GmbH and B-W would constitute a violation of the provisions of the antitrust laws of the United States.

(b) The elimination of competition by agreement between Bosch U.S. and B-W would constitute a violation of the provisions of the antitrust laws of the United States.

14. (a) Dr. Merkle's simultaneous membership on the board of management of Bosch GmbH and the board of directors of B-W constitute violations of Section 8 of the Clayton Act, as amended, 15 U.S.C. 19, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, on the part of Bosch GmbH, B-W and Dr. Merkle.

(b) Dr. Merkle's simultaneous membership on the board of directors of Bosch U.S. and of B-W constitutes violations of Section 8 of the Clayton Act, as amended, 15 U.S.C. 19, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, on the part of Bosch GmbH, Bosch U.S., B-W and Dr. Merkle.

15. (a) Dr. Bacher's simultaneous membership on the board of management of Bosch GmbH and the board of directors of B-W constitute violations of Section 8 of the Clayton Act, as amended, 15 U.S.C. 19, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, on the part of Bosch GmbH, B-W and Dr. Bacher. [5]

(b) Dr. Bacher's simultaneous membership on the board of directors of Bosch U.S. and of B-W constitutes violations of Section 8 of the Clayton Act, as amended, 15 U.S.C. 19, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, on the part of Bosch GmbH, Bosch U.S., B-W and Dr. Bacher.

INITIAL DECISION BY

THEODOR P. VON BRAND, ADMINISTRATIVE LAW JUDGE

JUNE 30, 1980

PRELIMINARY STATEMENT

The complaint charges that Borg-Warner Corporation (Borg-Warner), Robert Bosch GmbH (Bosch GmbH), Robert Bosch Corporation (Bosch U.S.) and two individuals Hans L. Merkle (Merkle) and Hans Bacher (Bacher) violated Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The complaint alleges that Bosch GmbH and Borg-Warner compete in the sale of automotive ignition parts, wire and cable, carburetors, carburetor kits, automotive test equipment, automotive air conditioning compressors, and in non-automotive products such as hydraulic

valves, hydraulic gear pumps and motors.¹

Two violations are alleged. The first is Dr. Merkle's and Dr. Bacher's membership on the board of management of Bosch GmbH and on Borg-Warner's board of directors. The second violation charged is their simultaneous membership on the board of directors of Borg-Warner and that of Bosch U.S., a subsidiary of Bosch GmbH.

Respondents deny that either statute has been violated on the ground that complaint counsel have failed to establish the elements of a Section 8 violation. Specifically, they contend the record fails to demonstrate competition between Borg-Warner on the one hand and on the other Bosch GmbH and/or the latter's subsidiaries. Respondents urge that even if some competition is proven the competitive overlap is de minimis and not substantial as required by Section 8. Respondents further argue that charges of illegal interlocks based on the individual [3] respondents' positions with Bosch GmbH or on the United States activities of Femsal Inc. must be dismissed since Section 8 applies only to direct competition and not to indirect competition involving a parent or subsidiary of one of the interlocking corporations.

Bosch GmbH, a foreign corporation, contends further that the charges against it cannot be sustained since it is not directly engaged in commerce within the meaning of Section 8 of the Clayton Act. Bosch GmbH contends that the activities of its United States subsidiary are irrelevant to the resolution of that issue.

This matter is now before the undersigned for decision based on the allegations of the complaint, the answer, the evidence of record and the proposed findings of fact, conclusions and briefs filed by the parties. All proposed findings of fact, conclusions and arguments not specifically found or accepted herein are rejected. The undersigned, having considered the entire record and the contentions of the parties, makes the following findings of fact and conclusions, and issues the orders set out herein.

FINDINGS OF FACT

I. THE RESPONDENTS

A. *Borg-Warner Corporation*

1. Respondent Borg-Warner Corporation (Borg-Warner) is a Delaware corporation with its principal office at 200 South Michigan Avenue, Chicago, Illinois (Comp. and Borg-Warner's Ans. ¶ 5).

¹ Complaint counsel in the pretrial determined to offer no evidence concerning automotive test equipment and carburetors.

2. Borg-Warner has capital, surplus, and undivided profits aggregating more than \$1 million (Comp. and Borg-Warner's Ans. ¶ 5).

3. In 1976, Borg-Warner had worldwide sales of over \$1.86 billion (CX 21A). In 1979, its total sales amounted to approximately \$3 billion (Trauscht 1063-64).

4. Borg-Warner is a decentralized company, operating through five separate groups, each with various divisions in the following areas, air conditioning, chemicals and plastics, financial services, industrial products and transportation equipment (Trauscht 1063).

5. The automotive parts division and the hydraulics division, which was sold in 1979, belonged to Borg-Warner's transportation equipment group (Trauscht 1067-68; Reichers 621; [4] CX 22). Borg-Warner's York Automotive Division sells automotive air conditioner compressors in the United States (Borg-Warner Ans. ¶ 11; CX 21C).

6. Borg-Warner's business includes the sale of automotive ignition parts, wire and cable parts, carburetor kits, and automotive air conditioning compressors. Until mid-1979, Borg-Warner offered for sale and sold hydraulic valves and hydraulic gear pumps and motors (Comp. and Borg-Warner's Ans. ¶ 11; CX 3A-Z-37, 4A-Z-248, 5A-Z-6, 15A-Z-80, 16A-Z-43; App. B to Int. at 1, 13 *in camera*).

7. Borg-Warner is engaged in commerce as "commerce" is defined in the Clayton Act and is engaged in or its business affects commerce as "commerce" is defined in the Federal Trade Commission Act (Comp. and Borg-Warner Ans. ¶ 5).

B. Robert Bosch GmbH

8. Respondent Robert Bosch GmbH (Bosch GmbH) is a limited liability company organized under the laws of the Federal Republic of Germany with its principal office at Robert Bosch Platz 1, D-7016 Gerlingen/Schillerhohe, Federal Republic of Germany (Comp. and Bosch GmbH Ans. ¶ 1).

9. Bosch GmbH is a diversified producer of electric, electronic and mechanical components, systems and products for automotive, consumer and industrial markets including hydraulic equipment (CX 33).

10. Bosch GmbH is engaged in commerce as "commerce" is defined in the Clayton Act and in commerce or affecting commerce as "commerce" is defined in the Federal Trade Commission Act by virtue of the business operations of its subsidiary Bosch U.S. (Findings 33-61).

C. Robert Bosch Corporation

11. Respondent Robert Bosch Corporation (Bosch U.S.) is a New York corporation with its principal office at 2800 25th Avenue, Broadview, Illinois (Comp. and Bosch U.S. Ans. ¶ 4; CX 60).

