

Complaint

102 F.T.C.

IN THE MATTER OF  
ESTEE CORPORATION

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

*Docket C-3126. Complaint, Nov. 16, 1983—Decision, Nov. 16, 1983*

This consent order requires a Parsippany, N.J. manufacturer and marketer of health-related food products, among other things, to cease representing that any of its products have been accepted or recommended for use by diabetics or persons with hypoglycemia unless the identity of the endorser and the material qualifications or limitations placed on the endorsement are disclosed. If the company promotes a food as being appropriate for diabetics, it is required to disclose that the product is "not a reduced calorie food" in advertising and on package labels pursuant to FDA regulations. Representations that a food will or will not affect blood sugar levels, or that it has any health-related property for diabetics or hypoglycemics must be substantiated. Further, the firm is barred from misrepresenting the existence or truthfulness of endorsements; the identity of any sweetener; or that food containing fructose contains no sugar, is reduced in calories and is appropriate for weight control. The order additionally requires the company to provide the American Diabetes Association, Inc. or the Juvenile Diabetes Foundation with the sum of \$25,000 and to maintain files substantiating advertising claims for a period of three years.

*Appearances*

For the Commission: *Robert C. Cheek and Joel Winston.*

For the respondent: *Daniel L. Goldberg, Bingham, Dana & Gould,*  
Boston, Mass.

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 Estee Corporation (hereinafter "Estee"), hereinafter at times referred to as respondent, has violated the provisions of the 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. Estee is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 169 Lackawanna Avenue, Parsippany, New Jersey.

PAR. 2. Estee has been and now is engaged in the business of marketing and advertising health-related foods, including but not limited to foods promoted as appropriate for diabetics.

PAR. 3. The above-named respondent, in connection with the manufacture and marketing of said foods, has disseminated, published and distributed, and now disseminates, publishes and distributes, advertisements and promotional material for the purpose of promoting the sale of Estee's "special foods." These foods are sweetened with fructose, sorbitol, or high fructose corn syrup. Each of these foods, as advertised, is a "food" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of certain advertisements concerning its special foods through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to the insertion of advertisements in magazines and newspapers with national circulations, the mailing of promotional booklets entitled "Estee . . . Special Foods For Special Diets" and "The Rationale For Special Dietary Foods Made With Fructose" for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of Estee's special foods.

PAR. 5. Respondent has, directly or by implication, through the advertisements referred to in Paragraph Four and others, made statements concerning the positions of the Food and Drug Administration and American Diabetes Association on the consumption by diabetics of the sweeteners used in Estee's special foods. Typical of the statements in said advertisements, but not necessarily all-inclusive thereof, are the following:

The nutritive sweeteners Sorbitol and Fructose have been accepted by the ADA and the FDA as being useful in the diets of diabetics on the advice of a physician.

\* \* \* \* \*

Estee cookies are now sweetened with FRUCTOSE. The use of this all natural sweetener was recently reviewed by the American Diabetes Association. They concluded: "Thus, from short-term studies there appears to be *no need to restrict intake of Fructose* as compared with *complex carbohydrates* as it relates to changes in plasma glucose levels in diabetes." [Emphasis in original.]

PAR. 6. Through the use of the statements set forth in Paragraph Five and others, in the context in which they appeared, respondent has represented, directly or by implication, that the Food and Drug Administration and the American Diabetes Association each has concluded that the sweeteners in Estee's special foods are useful without significant qualifications in the diabetic's diet.

PAR. 7. In truth and in fact, the statements and representations set forth in Paragraphs Five and Six, in the context in which they appeared, were and are false, misleading and deceptive, in that:

(a) The Food and Drug Administration has made no conclusions about the usefulness of fructose, sorbitol, or high fructose corn syrup—the sweeteners in Estee's special foods—in the diabetic's diet.

(b) The American Diabetes Association has made no conclusions about the usefulness of Estee's high fructose corn syrup in the diabetic's diet, and its conclusions (as stated in Olefsky and Crapo, "Fructose, Xylitol, and Sorbitol," *Diabetes Care*, Vol. 3, No. 2 (March-April, 1980)) about the usefulness of fructose and sorbitol contain significant qualifications.

Therefore, neither the Food and Drug Administration nor the American Diabetes Association has concluded that the sweeteners in Estee's special foods are useful without significant qualifications in the diabetic's diet. For the foregoing reasons, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects and constituted, and now constitute, false advertisements.

PAR. 8. Respondent has, directly or by implication, through the advertisements referred to in Paragraph Four and others, made statements concerning the dietary qualities of Estee's special foods. Typical of the statements in said advertisements, but not necessarily all-inclusive thereof, are the following:

We know what it's like to live on a diet in a world filled with cookies, candies, and mouthwatering desserts. That's why we've created the world's largest assortment of diet treats. . . . We know you're always looking for ways to satisfy your desire for sweets while still staying within your diet.

\* \* \* \* \*

In an advertisement with the heading "LIFE CAN BE SWEET WITHOUT A LOT OF SUGAR" and with an image of Estee's "DIETETIC" coconut cookies prominently pictured:

*Fructose* is nature's sweetest sugar, commonly found in many fruits and berries. It's up to 50% sweeter than regular sugar, and it's even recommended for use by diabetics and hypoglycemics . . . . We'd like you to try our products made without sugar. . . .

PAR. 9. Through the use of the statements set forth in Paragraph Eight and others, in the context in which they appeared, respondent has represented, directly or by implication, that:

(a) Estee's foods are significantly reduced in calories compared with comparable foods.

(b) Estee's foods are useful or appropriate for weight control.

PAR. 10. In truth and in fact:

(a) Many of Estee's foods are not significantly reduced in calories compared with comparable foods.

(b) Many of Estee's foods are not useful or appropriate for weight control.

Therefore, the advertisements referred to in Paragraphs Four and Eight were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and representations set forth in Paragraphs Eight and Nine, in the context in which they appeared, were and are false, misleading and deceptive.

PAR. 11. Respondent has, directly or by implication, through the advertisements referred to in Paragraph Four and others, made statements concerning the identity and properties of the sweeteners used in Estee's special foods, and the usefulness or appropriateness of Estee's special foods for diabetics. Typical of the statements in said advertisements, but not necessarily all-inclusive thereof, are the following:

Estee Cookies are sweetened with FRUCTOSE, the natural sweetener that delivers the clean, sweet sugar taste that diabetics and hypoglycemics have always been denied.

\* \* \* \* \*

At Estee, our business is making life a little sweeter for people who can't afford a lot of ordinary table sugar (sucrose) in their diets. *Instead, we use sorbitol and fructose*, the slowly absorbed sweeteners that avoid the "highs and lows" of ordinary table sugar. [Emphasis in original.]

\* \* \* \* \*

Here is a special cookie designed for people with diabetes, hypoglycemia and hypertension, who must restrict their intake of ordinary sugar and salt.

\* \* \* \* \*

It's [fructose] up to 50% sweeter than regular sugar, and it's even recommended for use by diabetics and hypoglycemics.

\* \* \* \* \*

We'd like you to try our products made without sugar. . . .

\* \* \* \* \*

Meet the newest member of the Estee family of fine products—LOW CALORIE AND NO SUGAR FOODS.

PAR. 12. Through the use of the statements set forth in Paragraph Eleven and others, in the context in which they appeared, respondent has represented, directly or by implication, that:

(a) The sweetener in all of Estee's "fructose"-sweetened special foods is fructose.

(b) Estee's special foods, including its "fructose"-sweetened special foods, do not contain any sugar.

PAR. 13. In truth and in fact:

(a) The sweetener in certain of Estee's "fructose"-sweetened foods is not fructose, but rather is high fructose corn syrup.

(b) Estee's "fructose"-sweetened foods contain fructose, which is a sugar, or high fructose corn syrup, which is comprised of sugars.

Therefore, the advertisements referred to in Paragraphs Four and Eleven were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and representations set forth in Paragraphs Eleven and Twelve, in the context in which they appeared, were and are false, misleading and deceptive.

PAR. 14. Through the use of the statements set forth in Paragraph Eleven and others, in the context in which they appeared, respondent has represented, directly or by implication, that Estee's fructose- and sorbitol-sweetened special foods are useful or appropriate for the diabetic's diet.

PAR. 15. At the time of the disseminations of the statements and representations contained in Paragraphs Eleven and Fourteen, respondent did not possess and rely upon a reasonable basis for making such unqualified statements and representations, in that:

(a) Estee's fructose- and sorbitol-sweetened special foods should not be eaten in more than limited amounts by any diabetic.

(b) Many diabetics are on weight loss or weight control diets, and many of Estee's fructose- and sorbitol-sweetened special foods are not reduced in calories and therefore are not useful or appropriate for purposes of weight loss or weight control.

(c) Estee's fructose- and sorbitol-sweetened special foods are not appropriate for diabetics who are untreated or who are out-of-control.

Therefore, the making of said statements and representations as alleged constituted, and now constitutes, unfair and deceptive acts or practices in or affecting commerce.

PAR. 16. Through the use of the statements set forth in Paragraph Eleven and others, in the context in which they appeared, respondent has represented, directly or by implication, that:

(a) the sweetener in Estee's cookies and other high fructose corn syrup-sweetened special foods has the same characteristics as fructose, including its effects on diabetics' blood sugar levels.

(b) Estee's cookies and other high fructose corn syrup-sweetened special foods are useful or appropriate for the diabetic's diet and will not cause undesirable elevations of diabetics' blood sugar levels.

PAR. 17. At the time of the disseminations of the statements and

representations contained in Paragraphs Eleven and Sixteen respondent did not possess and rely upon a reasonable basis for making such statements and representations. Therefore, the making of said statements and representations as alleged constituted, and now constitutes, unfair and deceptive acts or practices in or affecting commerce.

PAR. 18. In the course and conduct of its aforesaid business and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the food industry.

PAR. 19. The use by respondent of the aforesaid unfair and deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 20. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair and deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

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

consent agreement and placed such agreement on the public record for a period of sixty (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 Estee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 169 Lackawanna Avenue, in the City of Parsippany, State of New Jersey.

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

For the purposes of this order, the term *food* shall mean and include any article used for food or drink for humans, chewing gum, and any article used for a component of any such article.

Any provision of this order shall not cover labels or labeling if such provision is inconsistent with regulations of the Food and Drug Administration or with the statutes it enforces.

The provisions of this order shall not apply to any label or labeling printed by respondent before the date of service of this order and shipped by respondent to distributors or retailers prior to January 1, 1984 or the date of service of this order, whichever is later.

#### I

*It is ordered,* That respondent Estee Corporation, a corporation, 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 the advertising, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that any food is accepted or recommended by an individual or organization other than the advertiser for use by a diabetic or hypoglycemic, unless in immediate conjunction with such representation the following is disclosed with equal prominence:

1. the identity of the individual or organization, and

2. all material qualifications or material limitations, if any, placed on the acceptance or recommendation by the individual or organization.

B. Failing to clearly and prominently disclose in a non-label advertisement: "This food is not a reduced calorie food," when:

1. respondent makes a representation, directly or by implication, in the advertisement that any food is an appropriate part of a diabetic's diet, and

2. a disclosure is required on the label that the food is not a reduced calorie food pursuant to regulations promulgated by the Food and Drug Administration.

*Provided*, That, where more than one food is promoted by a single advertisement, and a label disclosure is required pursuant to regulations promulgated by the Food and Drug Administration for one or more of the advertised foods, this section shall be satisfied if the following statement is clearly and prominently disclosed in the advertising: "Some of these foods are not reduced calorie foods."

C. Making any representation, directly or by implication, about the health-related comparability of one sweetener to another sweetener, unless at the time of dissemination of each such representation respondent possesses and relies on a reasonable basis which substantiates each such representation, consisting of competent and reliable scientific evidence of the type and quantum appropriate for the representation made.

D. Representing, directly or by implication, that a food:

1. will or will not affect blood sugar levels in any manner, or
2. has any health-related property or quality for diabetics or hypoglycemics,

unless at the time of dissemination of each such representation respondent possesses and relies on a reasonable basis which substantiates each such representation, consisting of competent and reliable scientific evidence of the type and quantum appropriate for the representation made.

E. Misrepresenting, directly or by implication:

1. the existence or truthfulness of any endorsement or recommendation,
2. the identity of any sweetener,
3. that any food which contains fructose or high fructose corn syrup does not contain any sugar, *provided*, that, this provision shall not prohibit respondent from truthfully representing that a food does not contain "sucrose" or "table sugar."

4. that a food is reduced in calories compared to other foods or is appropriate for weight control.

## II

*It is further ordered,* That respondent shall, within twenty-four (24) months after the date of service of this order, provide the aggregate sum of \$25,000 to the American Diabetes Association, Inc. or the Juvenile Diabetes Foundation. Said funds shall be designated as "for the purposes of research into dietary management of diabetes," *provided* that, if any of such funds are not used by the recipient organization(s) for said purposes, such funds shall revert to the general research funds of the organization(s).

## III

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

## IV

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure 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.

## V

*It is further ordered,* That respondent shall maintain files and records of all substantiation for claims made under Parts IC and ID of this order for a period of three (3) years after the dissemination of any advertisement containing such claim. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written demand for such material.

## VI

*It is further ordered,* That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form of its compliance with this order.

## IN THE MATTER OF

## ENDICOTT-JOHNSON CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

*Docket C-1009. Consent Order, Oct. 29, 1965—Modifying Order, Nov. 17, 1983*

On Nov. 17, 1983, the Federal Trade Commission modified the order issued against Endicott-Johnson Corp. on Oct. 29, 1965 (68 F.T.C. 842). The modification eliminates the provision which prohibited the company from acquiring any concern engaged in the manufacture and sale of footwear in the U.S. without prior Commission approval.

ORDER MODIFYING CEASE AND DESIST ORDER  
ISSUED ON OCTOBER 29, 1965

On October 29, 1965, the Federal Trade Commission, pursuant to Section 5 of the Federal Trade Commission Act and Section 11 of the Clayton Act, issued the consent order in this case against Endicott-Johnson Corporation prohibiting, for a period of twenty years, acquisitions of certain firms engaged in the manufacture or sale of shoes or footwear in the United States or the District of Columbia, without prior approval of the Commission.

The Commission has determined that absent special circumstances an order provision that requires prior Commission approval of acquisitions by the respondent should not exceed ten years in duration. 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 order in this case has been in effect for 17 years and the Commission has determined that no special circumstances warrant continued prior approval of respondent's acquisitions. The Commission therefore has determined that it would be in the public interest to modify its order in Docket No. C-1009 to provide that prior approval will not be required after October 31, 1983.

On October 7, 1983 the Commission issued an order to show cause why the order in Docket No. C-1009 should not be modified. The proposed modification was accepted by respondent.

Accordingly,

*It is ordered*, That this matter be, and it hereby is, reopened and that the order in Docket No. C-1009 be modified.

Modifying Order

102 F.T.C.

IN THE MATTER OF

## TEAC CORPORATION OF AMERICA

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-2752. Consent Order, Oct. 24, 1975—Modifying Order, Nov. 25, 1983*

The Federal Trade Commission has modified the order issued against TEAC Corporation of America on Oct. 24, 1975 (86 F.T.C. 981) to allow the company to prevent transshipment of its products to dealers who do not meet reasonable, non-discriminatory standards of promotion, service and display.

ORDER MODIFYING CEASE AND DESIST ORDER  
ISSUED ON OCTOBER 24, 1975

On October 24, 1975, the Federal Trade Commission ("Commission") issued an order against TEAC Corporation of America ("TEAC") in Docket No. C-2752, 86 F.T.C. 981 (1975), prohibiting TEAC from, among other things, restricting or limiting in any manner the customers or classes of customers to whom dealers may sell TEAC's products.

On March 8, 1983, the Commission issued a modified order in *U.S. Pioneer Electronics Corporation*, Docket No. C-2755 [101 F.T.C. 372], allowing Pioneer (one of TEAC's competitors) to prevent transshipment of its products to dealers who do not meet reasonable, non-discriminatory standards of promotion, service and display. The initial *Pioneer* order contained the same provisions that are contained in the TEAC order. Both orders contain a most favored respondent clause pursuant to which the Commission may modify the respective orders in order to bring them into conformity with less stringent restrictions imposed on the respondents' competitors.

On August 1, 1983, the Commission issued an order to show cause why the proceeding in Docket No. C-2752 should not be reopened to modify Paragraph I(11) of the order in this case to read as follows:

Preventing or prohibiting any independent dealer or distributor from reselling his products to any persons or group of persons, business or class of businesses, except as expressly provided herein. This order shall not prohibit respondent from establishing lawful, reasonable, and non-discriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability, nor shall this order prohibit respondent from requiring its dealers who sell respondent's products for resale to make such sales only to dealers who maintain such minimum standards.

The proposed modification was accepted by TEAC. In view of the Commission's action in *Pioneer*, the Commission believes that this modification is in the public interest.

Accordingly,

*It is ordered,* That this matter be, and it hereby is, reopened and that Paragraph I(11) of the order in Docket No. C-2752 be modified as indicated above.

## IN THE MATTER OF

## JIM WALTER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

*Docket 8986. Amended Complaint, June 15, 1982—Decision, Nov. 30, 1983*

This consent order requires a leading manufacturer of shell housing and construction materials, and its wholly-owned subsidiary, among other things, to timely divest, to a Commission-approved buyer, the asphalt roofing plants located in Wilmington, Ill., Philadelphia, Pa., Chester, W. Va. and Memphis, Tenn., including their adjacent felt mills. Should any of the plants not be divested within 15 months of the effective date of the order, a trustee appointed by the Commission will effect divestiture of the remaining plant or plants. The order requires respondents to cooperate with the trustee in the discharge of his/her duties, and compensate him/her for the reasonable value of his/her services, including expenses. Further, for a period of 10 years, respondents are prohibited from acquiring any asphalt roofing plant in 41 specified states without prior Commission approval.

*Appearances*

For the Commission: *David W. Long.*

For the respondents: *W. Donald McSweeney, William A. Montgomery, John J. Voortman and Walter C. Greenough, Schiff, Hardin & Waite, Chicago, Ill.*

## AMENDED COMPLAINT

In the exercise of authority vested in it by the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that respondents Jim Walter Corporation, a corporation, and The Celotex Corporation, a corporation, have violated Section 7 of the Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and that a further proceeding in respect thereof concerning the acquisition of and merger with Panacon Corporation, would be in the public interest, issues this amended complaint charging as follows:

## I. DEFINITIONS

1. For the purpose of construing this complaint the following definitions shall be controlling:

(a) *Saturated felts* consist of a dry felt base, made from rags, wood,

and other cellulose fibers or from glass fibers or asbestos, which is saturated, coated or impregnated with an asphalt or tar saturant.

(b) *Roll roofing* is made from a saturated felt by applying an additional coating of more viscous, weather-resistant asphalt.

(c) *Asphalt shingles* are mineral-surfaced roll roofing machine-cut into squares or strips.

(d) *Asphalt and tar roofing materials* and *asphalt roofing materials* are used interchangeably herein to refer to saturated felts, roll roofing, and asphalt shingles, but specifically excludes accessory items such as asphalt cements, adhesives, primers, and mineral granules.

(e) *Elastomeric roofing materials* includes both solid pre-formed sheets and liquids made of synthetic polymer materials. The principal elastomeric roofing materials, available in either liquid or sheet applied systems, include acrylic, butyl, chlorosulphinated polyethylene, EPDM, neoprene, polyvinyl chloride (PVC), vinyl, rubberized asphalt, silicone and urethane.

## II. RESPONDENTS

2. Jim Walter Corporation (hereafter "JWC") is a publicly-held corporation chartered and operating under the laws of the State of Florida, with its principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida.

3. The Celotex Corporation (hereafter "Celotex" or the "Celotex Division") is a fully-owned subsidiary of JWC, chartered under the laws of the State of Delaware. Its principal place of business is 1500 North Dale Mabry Highway, Tampa, Florida.

4. In addition to being the leading manufacturer of shell (partially finished) housing, JWC also ranks as a major producer of construction materials. At the time of the acquisition in question here (*see IV, infra*), most of the corporation's activities were conducted through eight operational groups: mineral and fiber products; metals and wood products; stone and concrete products; pipe products; homebuilding supplies; paper; sugar operations; and oil and gas operations. Since its incorporation in 1955, JWC has managed to increase its share of the shell house market by internal expansion, and diversified into homebuilding supplies via acquisition. During the period 1964 to 1974 alone, JWC acquired no fewer than seventeen separate companies. For its fiscal year ending August 31, 1972, the year of the acquisition in question, JWC reported revenues of \$881,737,000; total assets of \$983,217,000; and a net income of \$44,568,000. On the basis of these figures, the May 1973 *Fortune 500* issue ranked JWC as the 161st largest industrial corporation in the United States.

5. On July 12, 1962, JWC revealed the details of its agreement to purchase a 34 percent stock interest in Celotex. A principal manufac-

turer of insulation fiberboard, mineral wool, gypsum, and asphalt roofing materials, Celotex became a fully-owned subsidiary of JWC by the close of 1964. JWC further expanded its capacity to produce building materials and, in particular, roofing products by acquiring the Barrett Building Materials Division of Allied Chemical Corporation in 1967. The merger of Barrett into JWC's Celotex Division extended Celotex' capabilities in roofing materials from one plant to eight.

6. At all times relevant to this complaint JWC and Celotex sold and shipped, and continue to sell and ship, their products in interstate commerce throughout the United States. Consequently, JWC and Celotex were at the date of the acquisition in question here, and are now, engaged in or affecting commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12) and the Federal Trade Commission Act (15 U.S.C. 44).

### III. PANACON CORPORATION

7. Prior to April 17, 1972, Panacon Corporation (hereafter "Panacon") was a corporation chartered and operating under the laws of the State of Michigan, with a principal place of business at 320 South Wayne Ave., Cincinnati, Ohio. The Glen Alden Corporation owned 89 percent of the outstanding common stock of Panacon prior to April 1972.

8. At the time of its acquisition, Panacon was a substantial manufacturer of a wide range of products for residential and commercial construction and industrial applications. Organized in six operating divisions, Panacon produced and marketed such diverse products as vitreous china, porcelain-on-steel plumbing ware, floor tiles, roofing materials, insulations, bathroom cabinets, lighting fixtures, ventilating fans, electric fireplaces, and water heaters. For its fiscal year ending December 31, 1971, Panacon reported revenues of \$181,129,000; total assets of \$106,008,000; and a net profit of \$10,591,000.

9. On April 9, 1970, the Plan and Agreement of Merger executed on December 31, 1969, by the Philip Carey Corporation and Briggs Manufacturing Company was consummated. Under the terms of this agreement Carey was merged into Briggs, and Briggs, as the surviving entity, adopted the new name of Panacon Corporation. Each share of the Briggs common stock was exchanged for one share in Panacon; all of the Carey common stock was converted into 4,644,000 shares of common and 7,356,000 shares of Class A common stock in Panacon.

10. At all times relevant to this complaint Panacon sold and shipped products in interstate commerce and, therefore, was engaged in or affected commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12) and the Federal Trade Commission Act (15 U.S.C. 44).

## IV. THE ACQUISITION

11. Pursuant to an agreement signed earlier in the month, JWC purchased an 89 percent stock interest in Panacon from Glen Alden Corporation for \$62,000,000 on April 17, 1972. On June 29, 1972, the shareholders of Panacon voted to approve the merger of Panacon into the Celotex Division of JWC. Thereafter, JWC completed its takeover by giving the remaining shareholders cash for their 11 percent interest. The total cost of the acquisition was approximately \$73,000,000.

## V. TRADE AND COMMERCE

12. Functionally, the production of asphalt and tar roofing materials breaks down into two distinct processes: (1) the preparation of a base (dry felt, asbestos, or fiberglass) mat; and (2) the conversion of this mat into saturated felts, roll roofing, or shingles. The majority of asphalt roofing materials derive from a dry felt base saturated with asphalt flux, coated with mineral granules, and cut into sheets or shingles.

13. Today a substantial percentage of all roofing applied in the United States is produced by the asphalt roofing industry. There are approximately 24 manufacturers of asphalt roofing materials operating a total of approximately 120 plants in the United States.

14. By 1980, elastomeric roofing materials accounted for approximately 11 percent of the combined domestic sales of asphalt roofing materials and elastomeric roofing materials used in commercial and industrial roofing applications.

15. There are two competitively significant lines of commerce or relevant product markets in which to analyze the effects of the acquisition. The first product market consists of all asphalt and tar roofing materials. The second product market consists of all asphalt and tar roofing materials and elastomeric roofing materials.

16. There are two competitively significant sections of the country or relevant geographic markets in which to analyze the effects of the acquisition. The first geographic market consists of all States within the continental United States except the States of California, Oregon, Washington, Arizona, Nevada, Utah and Idaho (hereafter the "41-state market"). The second geographic market consists of 26 contiguous States (listed in alphabetical order): Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin (hereafter the "26-state market").

17. In 1971, the year prior to the acquisition, sales by producers of

asphalt and tar roofing materials in the 41-state market totalled approximately \$579.7 million, with the four largest firms accounting for approximately 51.7 percent and the eight largest firms accounting for approximately 82.5 percent of sales. In that year in the 41-state asphalt and tar roofing materials market, Panacon was the fourth largest firm, accounting for approximately 10.1 percent of sales, and JWC was the sixth largest firm, accounting for 8.8 percent of sales.

18. In 1972, the year of the acquisition, sales of asphalt and tar roofing materials in the 41-state market totalled approximately \$654.4 million, with the four largest firms accounting for approximately 61.6 percent and the eight largest firms accounting for approximately 85.8 percent of sales. As a result of the acquisition, JWC became the second largest firm in the 41-state asphalt and tar roofing materials market with approximately 18.4 percent of sales in 1972.

19. In 1971, the year prior to the acquisition, sales by producers of asphalt and tar roofing materials in the 26-state market totalled approximately \$477 million, with the four largest firms accounting for approximately 52.4 percent and the eight largest firms accounting for 84.7 percent of sales. In that year in the 26-state asphalt and tar roofing materials market, Panacon was the second largest firm, accounting for approximately 11.7 percent of sales, and JWC was the sixth largest firm, accounting for approximately 9.7 percent of sales.

20. In 1972, the year of the acquisition, sales of asphalt and tar roofing materials in the 26-state market totalled approximately \$532.9 million, with the four largest firms accounting for approximately 62.6 percent and the eight largest firms accounting for approximately 87.3 percent of sales. As a result of the acquisition, JWC became the largest firm in the 26-state asphalt and tar roofing materials market with approximately 20.7 percent of sales in 1972.

21. In 1971 and 1972, sales of elastomeric roofing materials in both the 41-state and 26-state markets were relatively minor compared to sales of asphalt and tar roofing materials. Thus, in those years, the size and concentration of the market for asphalt and tar roofing materials and elastomeric roofing materials in both the 41-state and 26-state sections of the country were substantially similar to the markets described in Paragraphs 17 through 20 above.

#### VI. EFFECTS OF THE ACQUISITION

22. The effect of the acquisition of Panacon by JWC has been and may be substantially to lessen competition or to tend to create a monopoly in the manufacture, sale, and distribution of asphalt and tar roofing materials, and asphalt and tar roofing materials, and elastomeric roofing materials, in both the 41-state and 26-state sections of the country in the following ways, among others:

(a) By eliminating actual competition between JWC and Panacon in the manufacture, sale and distribution of asphalt roofing materials.

(b) The ability of JWC's competitors to compete in the manufacture, sale and distribution of asphalt and tar roofing materials or elastomeric roofing materials has been, and may be, further substantially diminished.

(c) The probability of JWC's competitors pricing their asphalt and tar roofing materials or elastomeric roofing materials on an independent basis has been, and may be, further substantially impaired as a result of the increased potential for price leadership among manufacturers of asphalt and tar roofing materials and among manufacturers of asphalt and tar roofing materials or elastomeric roofing materials.

(d) The entry of new asphalt and tar roofing materials manufacturers may have been, and may be, significantly discouraged or retarded.

(e) The ability of purchasers of asphalt roofing materials, as defined herein, to select from alternative manufacturers has been and may be substantially limited.

#### VII. VIOLATIONS CHARGED

23. The acquisition of Panacon by JWC constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

24. The acquisition of Panacon by JWC constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

Commissioner Pertschuk did not participate.

#### DECISION AND ORDER

The Commission having heretofore issued its amended complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that amended complaint, together with a notice of contemplated relief; and

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

1. Respondent Jim Walter Corporation 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 1500 North Dale Mabry Highway, in the City of Tampa, State of Florida.

2. Respondent The Celotex Corporation, a wholly-owned subsidiary of Jim Walter Corporation, 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 1500 North Dale Mabry Highway, in the City of Tampa, State of Florida.

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

#### ORDER

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

1. *Respondents* means Jim Walter Corporation ("JWC"), a corporation incorporated under the laws of the State of Florida, with its principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida, The Celotex Corporation ("Celotex") (a wholly-owned subsidiary of JWC), a corporation incorporated under the laws of the State of Delaware with its principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida, their subsidiaries, successors and assigns, and their officers, directors and agents.

2. *Plants* means the asphalt roofing plants owned by Celotex, together with all properties and assets thereof, including their adjacent felt mills, if any, and all additions and improvements thereto, that are located at:

- (a) Wilmington, Illinois;
- (b) Philadelphia, Pennsylvania;
- (c) Chester, West Virginia; and
- (d) Memphis, Tennessee;

*provided, however, that the term plants does not include those assets*

or properties disposed of by respondents in the ordinary course of the business of operating or renovating such facilities for the manufacture of asphalt roofing products; and *provided further* that the term *plants* does not include such properties or assets as would otherwise be part of a plant, where the eligible person acquiring a plant elects, in its sole discretion, but subject to the approval of the Commission, not to acquire those properties or assets.

3. *Person* means any individual, corporation, partnership, joint venture, trust, unincorporated association, or other business or legal entity.

4. *Asphalt Roofing Plant* means a plant for the manufacture of *asphalt roofing products* as such products are defined in Paragraphs I(1)(a)-(d) of the Amended Complaint.

5. *Eligible Person* means any person or persons approved in advance by the Commission who has the capacity and intention to operate the plant(s) to be acquired as a facility or facilities for the manufacture of asphalt roofing products.

6. *Commission* means the Federal Trade Commission.

7. *Director* means the Director of the Commission's Bureau of Competition.

8. *Relevant Market* means the Continental United States with the exception of the States of California, Oregon, Washington, Arizona, Nevada, Utah and Idaho.

## I.

*It is ordered*, That, within twenty-four months of the effective date of this Order, respondents, either directly or through the trustee provided in Paragraphs II and III below, shall divest the plants located at Wilmington, Illinois; Philadelphia, Pennsylvania; Chester, West Virginia; and Memphis, Tennessee, either separately or in any combination, to one or more eligible persons in such a way as to reasonably ensure that the plants can be operated by the eligible person or persons as a facility or facilities for the manufacture of asphalt roofing products. The divestiture or divestitures shall be absolute and unconditional and on terms and conditions approved in advance by the Commission. Nothing in this Order shall be deemed to prohibit respondents from accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security interest received by respondents to secure full payment of the consideration for which the plants are divested. If respondents, by enforcement or settlement of any such bona fide lien, mortgage, deed of trust or other form of security interest, reacquire ownership, possession or control of any of the plants, within three years from the date of divestiture, they shall promptly

notify the Director in writing, and shall dispose of any such plant or plants in accordance with the terms of this Order as if this Order were reissued on the date of such reacquisition.

## II.

*It is further ordered,* That any plants not divested by respondents within fifteen months from the effective date of this Order shall be subject to divestiture by a trustee to be appointed by the Commission in accordance with the following procedures: (a) if any plants remain to be divested at the end of twelve months following the effective date of this Order, respondents and the Director or his designee shall promptly begin negotiations to identify mutually acceptable candidates for trustee; (b) respondents and the Director shall submit the name of one or more mutually acceptable candidates (or if respondents and the Director fail to agree, the names of their separate candidates), to the Commission no later than the end of the fourteenth month following the effective date of this Order; (c) such nominations shall be accompanied by a proposed trust agreement and such other information as may be helpful to the Commission's determination; and (d) the Commission will then appoint the trustee from among the candidates nominated by respondents and the Director. Promptly upon the appointment of the trustee, respondents shall execute a trust agreement consistent with the provisions of this Order and subject to approval by the Director, that transfers to the trustee all rights and powers necessary to permit him to divest the remaining plant or plants in accordance with the terms of this Order. The trustee shall be charged to attempt diligently and in good faith to effect divestiture of the plant or plants in any manner consistent with the terms of this Order as quickly as possible within nine months from the date of the execution of the trust agreement. Pending divestiture of the plant or plants, respondents shall be permitted to continue to manage the plant or plants for their own accounts. Upon divestiture of one or more plants, and after deducting his/her fees and expenses, as provided in this Order and the trust agreement, the trustee shall pay to respondents any remaining proceeds. If the trustee is unable to divest a plant or plants within such nine-month period, then respondents are relieved from the provisions of this Order requiring divestiture of such plant or plants; *provided, however,* that if divestiture is delayed by reason of a disagreement between or among respondents, the trustee and the Commission concerning the interpretation or implementation of this Order, the nine-month period for divestiture by the trustee shall be extended day-for-day by the number of days such disagreement remains unresolved. If the trustee

resigns or fails or ceases to act diligently, the Commission may appoint a substitute trustee to divest the plant or plants in accordance with the terms of this Order. The appointment of a trustee shall not preclude the Commission from seeking any remedy that may be available to it for any failure by respondents to undertake their obligations set forth in Paragraphs II through VIII of this Order.

### III.

*It is further ordered,* That if a trustee is appointed:

A. Respondents shall compensate the trustee for the reasonable value of his/her services necessary to effect the divestiture of the plant or plants.

B. Respondents shall reimburse the trustee for the reasonable value of all expenditures and other obligations incurred by the trustee that are reasonably related to his/her efforts to divest the plant or plants.

C. Respondents shall provide the trustee with such access to their books and records as may be necessary for the trustee to ascertain such facts as are reasonably related to his efforts to divest the plant or plants.

D. Respondents shall empower the trustee to disclose information respecting the plant or plants to potential acquirers so that they may evaluate the plant or plants being offered, and shall allow inspection of the plants by prospective acquirers. With respect to such information designated by the respondents as proprietary or confidential, the trustee shall secure an agreement from each person to whom disclosure is made to hold confidential any information disclosed and to use the information solely for the purpose of evaluating plant or plants and not to employ it for any business or competitive purpose.

E. Respondents shall make available to the trustee their employees who have knowledge of the history, characteristics and operating potential of the plant or plants so that the trustee may ascertain such facts as are reasonably related to his efforts to divest the plant or plants. The trustee shall give reasonable notice to the respondents of any request for access to their personnel who, at the sole election of respondents, may be accompanied by attorneys representing the respondents at any meeting with the trustee.

F. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. Respondents shall reimburse the trustee for the reasonable value of all expenses so incurred.

G. Respondents shall cooperate with the trustee in the discharge of his/her duties and shall provide all evidences of transfer, consents

and related documents as may be necessary to divest any plant or plants approved for divestiture by the Commission.

H. If respondents and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the plant or plants, then the respondents and the trustee shall submit the dispute to the Commission for resolution. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon respondents and the trustee.

#### IV.

*It is further ordered,* That pending the divestitures required by this Order, respondents shall not cause, and shall use their best efforts to prevent, any deterioration of the plants that may impair the marketability of any such plants, normal wear and tear excluded. Respondents may, but shall not be required to, make capital expenditures for the improvement of the plants. Nothing in this Order shall prevent respondents from operating or not operating the plants or furloughing employees at the plants in a manner consistent with normal business practice, comparable to the manner in which they operate or furlough at their other asphalt roofing plants, pending the divestitures required by this Order.

#### V.

*It is further ordered,* That for a period of ten years from the date of this Order, respondents shall not directly or indirectly acquire, through purchase, lease or other transaction that would confer ownership, possessory interest or control, any asphalt roofing plant located in the relevant market, without the prior approval of the Commission. The provisions of this Paragraph shall not apply to the reacquisition by respondents of any plant or plants through the enforcement of any bona fide lien, mortgage, deed of trust, or other form of security interest as provided in Paragraph I.

#### VI.

*It is further ordered,* That respondents and the trustee, if a trustee is appointed, shall within ninety days from the effective date of this Order and every ninety days thereafter until the divestitures required by this Order are completed, submit in writing to the Commis-

sion a verified report setting forth in detail the manner and form in which respondents or the trustee, as applicable, intend to comply, are complying, and have complied with the terms of this Order and such additional information relating thereto as the Commission may from time to time reasonably require.

#### VII.

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

#### VIII.

*It is further ordered,* That respondents shall, upon written request of the Director made to respondents at their principal offices for the purpose of securing compliance with this Order, and for no other purpose, permit duly authorized representatives of the Commission, subject to any legally recognized privilege:

(1) reasonable access during the office hours of respondents, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in respondents' possession or control which relate materially and substantially to any matter contained in this Order; and

(2) an opportunity, subject to the reasonable convenience of respondents, to interview officers or employees of respondents, who may have counsel present, regarding such matters.

The foregoing provision shall not be interpreted to provide any access for the Commission to records relating to any of the business activities of respondents other than those relevant to the plants subject to this Order.

Commissioners Pertschuk and Calvani did not participate.

Complaint

102 F.T.C.

IN THE MATTER OF

LLOYD'S FURS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-3128. Complaint, Dec. 5, 1983—Decision, Dec. 5, 1983*

This consent order requires a Denver, Colo. company engaged in the advertising, sale and distribution of furs and fur-containing garments, among other things, to cease falsely representing a garment's designer or manufacturer. The order requires that any fur or fur-containing garment bearing a manufacturer's or designer's label accurately identify the manufacturer or designer of the garment. Further, respondent must comply with all written labeling instructions received from a manufacturer or designer, and maintain records documenting from whom a garment was received and to whom it was sold, as well as records documenting compliance with the Fur Products Labeling Act and this order.

*Appearances*For the Commission: *F. Kelly Smith.*For the respondent: *James E. Hartley, Holland & Hart, Denver, Colo.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Lloyd's Furs, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its Complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lloyd's is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Colorado, having its office and principal place of business at 1543 Stout Street, Denver, Colorado.

PAR. 2. Respondent is now, and for some time last past has been engaged in the purchasing, offering for sale, sale, and distribution of fur-containing garments and related products to the public at retail.

PAR. 3. In the ordinary course and conduct of its business, respondent operates retail sales outlets in Denver, Colorado, and in several midwestern and western states. It causes and has caused the conduct

of business in each of these states through the U.S. mail and other facilities of interstate commerce. Respondent maintains and has maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its business, respondent offers for sale and sells to the general public at retail furs or fur-containing garments to which are attached or affixed labels purporting to reflect the manufacturer or designer of the garments. Respondent, by attaching or affixing such labels to the garments it offers for sale and sells to the general public, represents directly or by implication to consumers that said garments were manufactured or designed by the persons or firms indicated on the labels.

PAR. 5. In truth and in fact labels reflecting the manufacturers or designers of fur and fur-containing garments have been attached or affixed to said garments by respondent without regard to whether those garments were actually designed or manufactured by the designer or manufacturer designated on the labels. Therefore, respondent's aforesaid representations, acts or practices are false, misleading, deceptive or unfair.

PAR. 6. The use by respondent of the aforesaid false, misleading, deceptive or unfair representations, acts or 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 representations, acts or practices are true and into the purchase of substantial quantities of furs or fur-containing garments by reason of said erroneous and mistaken belief.

PAR. 7. The acts and practices of respondent Lloyd's, as herein alleged, were and are all to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Commissioner Calvani did not participate.

#### 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 draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 Lloyd's Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business at 1543 Stout Street, in the City of Denver, State of Colorado.

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, Lloyd's Furs, Inc. ("Lloyd's"), a corporation, 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 the purchasing, advertising, offering for sale, sale and distribution of any fur or fur-containing garment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that any such fur or fur-containing garment has been manufactured or designed by any particular manufacturer or designer, unless such is the case and respondent has in good faith complied with all written labeling instruc-

tions received from the manufacturer or designer of the fur or fur-containing garment and maintained accurate records demonstrating such compliance and showing from whom the fur or fur-containing garment was received and to whom it was sold.

B. Attaching or affixing to any fur or fur-containing garment a label purporting to identify the manufacturer or designer of the garment, unless such fur or fur-containing garment has, in fact, been manufactured or designed by that manufacturer or designer and respondent has in good faith complied with all written labeling instructions received from the manufacturer or designer of the fur or fur-containing garment and maintained accurate records demonstrating such compliance and showing from whom the fur or fur-containing garment was received and to whom it was sold.

## II.

*It is further ordered,* That within thirty (30) days after this order becomes final, respondent shall provide a copy of this order to its officers, managers, supervisors and sales personnel. Respondent shall also provide a copy of this order to all its officers, managers, supervisors and sales personnel who join the corporation within five (5) years from the date of this order.

## III.

*It is further ordered,* That respondent shall maintain records sufficient to demonstrate its compliance with this order and with the Fur Products Labeling Act and the rules and regulations promulgated thereunder. It shall make such records available for inspection by the staff of the Federal Trade Commission upon request.

## IV.

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

## V.

*It is further ordered,* That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report

in writing setting forth in detail the manner and form in which it has complied with this order.

Commissioner Calvani did not participate.

