

Complaint

77 F.T.C.

emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF

CITY SEWING MACHINE COMPANY, INC., ET AL.

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

Docket C-1747. Complaint, June 1, 1970—Decision, June 1, 1970

Consent order requiring a Marysville, Kansas, retailer of sewing machines to cease using deceptive prices, failing to maintain adequate records to support its pricing practices, using contests and other promotional devices deceptively to obtain leads, misusing the term "automatic" to describe its sewing machine, falsely guaranteeing its products, and misrepresenting that it has posted bond in support of its guarantees.

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 City Sewing Machine Company, Inc., a corporation, and Lee R. Dam, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent City Sewing Machine Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 818 Broadway, in the city of Marysville, State of Kansas.

Respondent Lee R. Dam is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and prac-

tices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and other products to the public.

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

PAR. 4. Basically, respondents' sales plan has been, and currently is, to have puzzles published in magazines and newspapers, to mail puzzles to numerous persons and to request that such puzzles be solved and returned to them for entry in a drawing, awarding as prizes a free sewing machine, several other free prizes of less monetary value than the free sewing machine or a discount certificate. After the said free prizes have been awarded on the basis of a drawing of puzzle entries, respondents mail to persons, who failed to win one of the same, a letter notifying them that their puzzle entry has won for them an enclosed discount certificate, stating a specified monetary amount that may be used in reducing the represented price of one of respondents' sewing machines, as pictured and otherwise described in a likewise enclosed advertisement.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made and are now making numerous statements and representations in newspapers, magazines, promotional material and by other means with respect to the prices, contests, promotional programs, prizes, characteristics and guarantees of their merchandise.

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

Congratulations,

The judges have selected your entry as a second prize winner in our recent Smart Money contest.

The enclosed \$160.00 Discount Certificate is the prize you have won. This certificate is good toward the purchase of the \$229.95 Deluxe Dressmaker 24 cam, Zig Zag sewing machine.

* * * * *

Complaint

77 F.T.C.

For Example :

Deluxe 24 cam machine that makes Zig Zag and Fancy Stitches
Automatically :

Model SWA-2000 Regular Price.....	\$229.95
Less Discount Certificate.....	160.00
Your Total Cost Only.....	69.95

The Dressmaker sewing machines . . . have a 30 year guarantee bond.

PAR. 6. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that :

1. Through the use of the word "Regular," the price of \$229.95 is the price at which they have made a bona fide offer to sell or have sold Model SWA-2000 sewing machines on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

2. With respect to winners of their discount certificate, they have conducted a bona fide contest.

3. Recipients of their discount certificate have won a valuable prize, entitling them to a discount in the amount of \$160 as a reduction from the price at which the Model SWA-2000 sewing machine is usually and customarily sold by respondents.

4. The Model SWA-2000 sewing machine makes zig zag and fancy stitches automatically, by self-operation and by self-regulation.

5. The Model SWA-2000 sewing machine is guaranteed for 30 years without condition or limitation.

6. They have posted a bond or have established a reserve fund, the benefits of which are available to the recipients of their guarantees.

PAR. 7. In the truth and in fact :

1. With the exception of rare instances, the respondents have not made a bona fide offer to sell nor have they sold Model SWA-2000 sewing machines at a price of \$229.95 on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

2. Respondents have not conducted a bona fide contest with respect to winners of their discount certificate. Such discount certificates are awarded to all contest participants, who did not win one of their limited number of merchandise prizes.

3. Recipients of respondents' discount certificate have not won a valuable prize, since the \$160 amount of the said discount certifi-

cate is deducted not from respondents' usual and customary price for the Model SWA-2000 sewing machine but from a fictitious higher price, as herein alleged, and therefore, the value of the discount certificate is illusory.

4. The Model SWA-2000 sewing machine does not make zig zag or fancy stitches automatically, by self-operation or by self-regulation.

5. The 30 year guarantee of the Model SWA-2000 sewing machine is subject to numerous conditions and limitations, which are not disclosed in respondents' advertising.

6. Respondents have not posted a bond nor have they established a reserve fund, the benefits of which are available to recipients of their guarantees.

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

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of sewing machines and other products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent Lee R. Dam, an individual, trading and doing business as City Sewing Machine Company, with violation of the Federal Trade Commission Act, and the said respondent having been served with notice of said determination and with a

copy of the complaint the Commission intended to issue, together with a proposed form of order; and

It subsequently appearing that the said Lee R. Dam had incorporated the said business under the name and style of City Sewing Machine Company, Inc., and said corporation having indicated a willingness to dispose of this matter by consent agreement; and

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

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

1. Respondent City Sewing Machine Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 818 Broadway, in the city of Marysville, State of Kansas.

Respondent Lee R. Dam is an officer of said corporation and his principal office and place of business are located at the above address.

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

ORDER

It is ordered, That respondent City Sewing Machine Company, Inc., a corporation, and its officers, and Lee R. Dam, individually and as an officer of said corporation and respondents' agents, rep-

representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Regular," "Reg." or any other word or words of similar import or meaning, to refer to any price amount which is in excess of the price at which an article of merchandise or service has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Representing, directly or by implication, that any amount is respondents' usual and customary retail price for an article of merchandise or service when such amount is in excess of the price or prices at which such article of merchandise or service has been sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business.

3. Failing to maintain adequate records (a) which disclose the facts upon which any pricing claims and similar representations of the type described in Paragraphs 1 and 2 of this order are based, and (b) from which the validity of any pricing claims and similar representations of the type described in Paragraphs 1 and 2 of this order can be determined.

4. Representing, directly or by implication, that names of winners are obtained through drawings, contests or by chance, when all of the names selected are not chosen by lot; or misrepresenting, in any manner, the nature or purpose of a contest.

5. Using any advertising, promotional program or procedure involving the use of false, deceptive or misleading statements to obtain leads or prospects for the sale of their products.

6. Representing, directly or by implication, that awards or prizes are of a certain value or worth when recipients thereof are not in fact benefited by or do not save the amount of the represented value of such awards or prizes.

7. Representing, directly or by implication, that any savings, discount, credit or allowance is given purchasers as a reduction from respondents' selling price for a specified product unless such selling price is the amount at which said product has been sold or offered for sale in good faith by respondents at retail for

a reasonably substantial period of time in the recent, regular course of their business.

8. Using the word "automatic" or any other word or term of similar import or meaning to describe any sewing machine either in its entirety or as to its over-all function or operation, or using any illustration or depiction which represents that such a machine is automatic in its entirety or as to its over-all function or operation: *Provided, however,* That nothing herein shall be construed to prohibit the use of the word or term "automatic" in describing a sewing machine's specific attachment or component or function thereof, which after activation and by self-operation, will perform without human intervention the mechanical function indicated.

9. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

10. Representing, directly or by implication, that respondents have posted a bond or have established a reserve fund, the benefits of which are available to recipients of their guarantees, unless respondents do in fact have such a bond or fund available and unless the said bond or fund is available to all recipients of their guarantees.

It is further ordered, That the respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

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

Complaint

IN THE MATTER OF

ARDEN-MAYFAIR, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket C-1748. Complaint, June 3, 1970—Decision, June 3, 1970*

Consent order requiring a Los Angeles, Calif., chain of supermarket grocery stores (Arden-Mayfair) and a Los Alamitos, Calif., brokerage firm (Chambossé) to cease violating Sec. 2(c) of the Clayton Act by engaging in such brokerage practices as Chambossé receiving brokerage or other payments from sellers of grocery products while under the direct or indirect control of Arden-Mayfair.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Arden-Mayfair, Inc., 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 2500 Garfield Avenue, Los Angeles, California.

PAR. 2. Respondent Arden-Mayfair, Inc., has been and is now engaged primarily in the retail distribution of grocery products through several operating divisions. The principal operating division of respondent Arden-Mayfair, Inc., is the Mayfair Market Division which operates a large number of retail supermarkets. As of July 24, 1969, the Mayfair Market Division of respondent Arden-Mayfair, Inc., operated a total of 211 supermarkets in the States of California, Arizona, Nevada, Oregon, and Washington. Respondent Arden-Mayfair, Inc.'s volume of business is substantial, totalling in excess of \$568 million annually with the Mayfair Market Division accounting for approximately 77 percent of total sales.

PAR. 3. Respondent Chambossé Brokerage Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 11110 Los Alamitos Blvd., Los Alamitos, California.

Respondent Halsey K. Chambossé, an individual, is president of

corporate respondent Chambossé Brokerage Company, and is located at the same address as said corporate respondent and owns a substantial portion of its stock. He formulates, directs and controls the acts, practices, and policies of said corporate respondent, including the acts and practices hereinafter described.

PAR. 4. Respondent Chambossé Brokerage Company has been and is now engaged in the brokerage business, purportedly representing various seller-principals located throughout the United States in connection with the sale and distribution of grocery products. A substantial part of the business done by respondent Chambossé Brokerage Company consists of arranging sales of private label grocery products to respondent Arden-Mayfair, Inc. In allegedly representing seller-principals in sales to Arden-Mayfair, Inc., respondent Chambossé Brokerage Company has demanded and received commissions, brokerage fees or other compensations from such sellers.

PAR. 5. Respondent Chambossé Brokerage Company in the course and conduct of its brokerage business has been and is now effecting sales of grocery products by sellers located in the State of California and other States, and purchases by respondent Arden-Mayfair, Inc., as well as other buyers located in various States of the United States in commerce, as "commerce" is defined in the Clayton Act. Said respondent has transported or caused such products to be transported from the sellers' places of business to the buyers' places of business located in other States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in effecting purchases and sales of such products by said respondent Chambossé Brokerage Company.

PAR. 6. In the course and conduct of its business for the past several years, respondent Arden-Mayfair, Inc., has purchased and resold, and is now purchasing and reselling grocery products in commerce, as "commerce" is defined in the Clayton Act which it purchases from sellers located in several States of the United States other than the State of California in which respondent Arden-Mayfair, Inc., is located. Said respondent purchases grocery products and causes them to be transported from the sellers' places of business in various States of the United States to its warehouses and retail stores in the State of California and various other States in the United States. Thus, there has been and is now a continuous course of trade in commerce by the purchase and resale of said products by respondent Arden-Mayfair, Inc.

PAR. 7. In the course and conduct of its business, respondent Arden-Mayfair, Inc., has been and is now utilizing the services of respond-

ent Chambossé Brokerage Company as a broker or agent in the purchase of private label grocery products from various sellers. On September 6, 1965, a predecessor of respondent Chambossé Brokerage Company and respondent Arden-Mayfair, Inc., entered into an employment contract which stated in pertinent part as follows:

This will confirm our oral agreement that all grocery items, including frozen foods, which are purchased for private label by the Market Division of Arden-Mayfair, Inc. (herein referred to as "Arden"), through brokers, will be purchased by Arden through Beebe-Chambossé Co. (herein referred to as Beebe).

The contract also contains the following condition relating to individual respondent Halsey K. Chambossé who formerly was employed by respondent Arden-Mayfair, Inc., as a procurement officer of private label merchandise:

It is understood that you will, at all times during the term of this agreement, retain voting stock control of Beebe and will also act as its Chief Executive Officer.

The contract further recites:

that all brokerage fees will be paid by the vendors and Arden will not be charged with any costs or other compensation.

This contract was ratified by the board of directors of respondent Arden-Mayfair, Inc., on December 6, 1965. Shortly thereafter the name of Beebe-Chambossé Co. was changed to Chambossé Brokerage Company. Since that date respondent Chambossé Brokerage Company and its predecessor have rendered numerous brokerage services for respondent Arden-Mayfair, Inc., and respondent Chambossé Brokerage Company has acted and is now acting as its purchasing agent or broker on a substantial amount of respondent Arden-Mayfair Inc.'s purchases of private label grocery products. In connection with such transactions, Chambossé Brokerage Company is subject to and under the direct or indirect control of respondent Arden-Mayfair, Inc., and has been and is now collecting and receiving brokerage, commissions or other compensation from sellers of grocery products.

PAR. 8. Respondent Arden-Mayfair, Inc., has received and is now receiving valuable brokerage services from respondent Chambossé Brokerage Company without paying either directly or indirectly any brokerage, commission or other compensation to said broker. At the same time, respondent Chambossé Brokerage Company has and is now collecting and receiving directly and indirectly commissions or other compensation from sellers when, in fact, it has been and is now acting for or in behalf of respondent Arden-Mayfair, Inc., or has

Decision and Order

77 F.T.C.

been or is now subject to the direct or indirect control of Arden-Mayfair, Inc.

PAR. 9. The aforesaid acts and practices of respondents and each of them in receiving and accepting, directly or indirectly, anything of value as a commission, brokerage or other compensation or any allowance or discount in lieu thereof from sellers, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violations of subsection 2(c) of Section 2 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Arden-Mayfair, Inc., 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 2500 Garfield Avenue, in the city of Los Angeles, State of California.

Respondent Chambossé Brokerage Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 11110 Los Alamitos Boulevard, in the city of Los Alamitos, State of California.

Respondent Halsey K. Chambossé is an officer of Chambossé Brokerage Company. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondent Arden-Mayfair, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Receiving or accepting services or anything of value from Chambossé Brokerage Company or any other broker, in connection with the purchase of grocery products, when such broker, agent, representative or intermediary is receiving or accepting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof from the seller while acting for or in behalf of or subject to the direct or indirect control of respondent.

2. Receiving or accepting, directly or indirectly from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of grocery products for respondent's own account.

It is further ordered, That respondents Chambossé Brokerage Company, a corporation, and its officers and Halsey K. Chambossé, individually and as an officer of Chambossé Brokerage Company, and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase or sale of grocery products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of grocery products for respondents' own account or where respondents are the agent, representative or intermediary acting for, or in behalf of, or subject to the direct or indirect control of, any buyer.

Complaint

77 F.T.C.

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

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

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

By the Commission, with Commissioner Elman not concurring.

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

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

Docket C-1749. Complaint, June 3, 1970—Decision, June 3, 1970

Consent order requiring a Los Angeles, Calif., manufacturer of metal finishing products and its subsidiary, a major producer of industrial chemicals and plastics with headquarters in New York City, to cease refusing to sell, service or guarantee products and/or equipment unless the purchaser also buys or uses other such products and/or equipment, selling a combined quantity of products at a lower unit price than an equivalent total quantity sold singly, unless the difference can be cost justified, distributing its products on an exclusive basis for the next 10 years, acquiring any manufacturer or distributor in the metal finishing industry for 10 years without the prior approval of the Federal Trade Commission, rationing supplies to customers unfairly or inequitably; the order also requires respondents to grant to responsible applicants licenses, for reasonable royalties, to all previously developed processes for preparing plastics for plating, and to make available each year a domestic price list for each of their standard metal finishing products, equipment and services, when the services are separable, and distribute it to any United States customer upon request.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of

the Clayton Act, as amended (15 U.S.C. Sec. 18) issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. Sec. 21), stating its charges as follows:

I. THE RESPONDENTS

A. Occidental Petroleum Corporation

1. Respondent, Occidental Petroleum Corporation ("Occidental"), is a corporation organized and existing under the laws of the State of California, with its office and principal place of business at 10889 Wilshire Boulevard, Los Angeles, California.

2. In 1967 Occidental had sales of \$826 million and assets of \$779 million as of December 31, 1967. Occidental, in 1967, was the 102nd largest industrial corporation in the United States in terms of sales and the 96th largest in terms of assets.

3. Prior to its acquisition of Hooker Chemical Corporation ("Hooker"), Occidental was principally engaged in the exploration for and development of natural resources, including oil, gas, coal, sulfur and phosphate rock, the marketing and transportation of crude oil, and the manufacture and sale of fertilizers and other agricultural chemicals.

4. On March 21, 1968, directors of Occidental and Hooker agreed in principle on the acquisition of Hooker by Occidental; a definitive agreement was reached on May 7, 1968. That agreement was approved by the stockholders of both companies on July 18, 1968. The acquisition was consummated on July 24, 1968.

5. In 1968, after its acquisition of Hooker, Occidental had consolidated sales of \$1,807 million and total assets of \$1,788 million as of December 31, 1968. Occidental, in 1968, was the 48th largest industrial corporation in the United States in terms of sales and the 41st largest in terms of assets.

6. Through Hooker, Occidental is a leading manufacturer and seller of a number of metal finishing products including phosphate conversion coatings, vapor degreasing materials and sodium hypophosphite, a chemical required for electroless plating, and has substantial sales of a number of other metal finishing products. Such products are used by electroplaters as well as other metal finishers.

7. At all times relevant herein, Occidental has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

B. Hooker Chemical Corporation

8. Respondent Hooker is a corporation organized and existing under the laws of the State of New York, with its office and principal

place of business located at 277 Park Avenue, New York, New York.

9. Hooker, in 1967, was approximately the 244th largest industrial corporation in the United States in terms of sales and approximately the 191st largest in terms of assets. Its total sales during 1967 were \$364.5 million, while its total assets amounted to \$366 million.

10. At the time of its acquisition by Occidental, Hooker was a major diversified producer of industrial chemicals, farm chemicals, and plastics. For the fiscal period ending December 31, 1967, approximately 21 percent of Hooker's consolidated sales were accounted for by metal finishing chemicals, 19 percent by farm chemicals, 10 percent by pulp and paper chemicals, 7 percent by detergent and dry cleaning chemicals, 15 percent by chemicals and specialties for other industrials uses, 20 percent by plastics, and 8 percent by international sales.

11. In 1962, Hooker acquired Parker Rust Proof Company, a leading manufacturer and supplier of phosphate conversion coatings and other products for metal finishing.

12. At all times relevant herein, Hooker has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

II. THE ACQUIRED COMPANIES

A. *The Udylite Corporation*

13. The Udylite Corporation ("Udylite"), is a corporation organized and existing under the laws of the State of Michigan with its office and principal place of business located at 21441 Hoover Road, Warren, Michigan.

14. At the time of the acquisition described in Paragraph 40, herein, Udylite was the largest supplier of metal finishing products, equipment and services to electroplaters in the United States. Udylite was the largest manufacturer and seller of non-precious metal electroplating products and equipment. In addition to electroplating products and equipment, Udylite also manufactured and sold other metal finishing supplies. Udylite provided extensive analytical and testing service, equipment design and repair, and other technical service and advice to its customers.

15. Udylite also manufactured and sold foundry facings of various kinds used in the production of metal castings and distributed foundry supplies, machinery and equipment.

16. At the time of the acquisition described in Paragraph 40, herein, Udylite was a large distributor of nickel and received large

allocations of nickel, in the form of soluble nickel anodes, for resale to electroplaters. At that time and subsequent thereto, nickel was and has been in extremely short supply.

17. UdyLite directly, or indirectly through subsidiaries and licensees, manufactured and distributed metal finishing materials and equipment in numerous foreign countries.

18. In 1966, UdyLite had sales of approximately \$71 million and total assets at the end of that year of \$32.3 million. In 1967, UdyLite's sales amounted to approximately \$62.5 million.

19. At all times relevant herein, UdyLite has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

B. Sel-Rex Corporation

20. Sel-Rex Corporation ("Sel-Rex"), is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located at 75 River Road, Nutley, New Jersey.

21. At the time of the acquisition described in Paragraph 41, herein, Sel-Rex was the largest supplier of metal finishing products, equipment and services to precious metal electroplaters in the United States. Sel-Rex provided extensive analytical and testing services, equipment design and repair, and other technical services and advice to its customers.

22. Sel-Rex directly, or indirectly through subsidiaries and licensees, manufactured and distributed precious metal products and equipment in numerous foreign countries.

23. In 1967, Sel-Rex had sales of \$33.4 million and total assets at the end of that year of about \$13.5 million.

24. At all times relevant herein, Sel-Rex has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

III. TRADE AND COMMERCE

A. Metal Finishing

25. Metal finishing consists of all procedures and processes for treating and improving metal surfaces, which are electroplating, electroless plating, preparation of plastics for plating, phosphating, conversion coatings, protective oils, electropainting, metal and paint stripping, etchants, bright dips, electropolishing, and pretreatments

and aftertreatments in connection with any of the foregoing, including cleaning, pickling and vapor degreasing.

26. The manufacture, sale and distribution of metal finishing products and equipment is a large and substantial industry. The sale of metal finishing products and equipment in the United States amounts to more than \$1 billion annually. Such sales are made by manufacturers directly and through distributors to metal finishing job shops and to companies engaged in manufacturing or assembling metal products which require metal finishing.

27. Prior to the acquisition of Udylite and Sel-Rex by Hooker, as described in Paragraphs 40 and 41 herein, suppliers to the metal finishing industry consisted of many limited-line manufacturers offering products and/or equipment to metal finishers relating to one or only a few types of metal finishing processes. In several cases, the manufacture and sale of products and/or equipment for use in conjunction with a given process was dominated by one or a few companies, among them Hooker, Udylite and Sel-Rex, as described in Paragraphs 6, 14 and 21, herein. However, no manufacturer offered a full line of products and equipment for a broad range of metal finishing processes. Subsequent to these acquisitions, Occidental, directly or through Hooker, has dominated the metal finishing industry by its possession of the combined specialties, and dominant positions within such specialties, of Udylite, Sel-Rex and Hooker, and by the combined manufacturing, marketing, research and financial strengths of Udylite, Sel-Rex and Hooker.

28. Many metal finishing products and equipment are owned or controlled as a result of a combination of patents, trade secrets and/or other proprietary rights. The nature and extent of a metal finishing supplier's proprietary position may constitute an important factor in selling non-proprietary as well as proprietary products and equipment. Prior to the acquisition of Udylite and Sel-Rex, as described in Paragraphs 40 and 41 herein, no one company possessed a significant proprietary position extending over a broad range of metal finishing products and services. Subsequent to these acquisitions, Occidental, directly or through Hooker, has possessed a significant proprietary position in a broad range of metal finishing products and equipment, through the combination of the patents, trade secrets and other proprietary rights of Udylite, Sel-Rex and Hooker.

B. Electroplating

29. The primary function of electroplating is to impart corrosion resistance and brightness to metal and plastic surfaces. Certain other

qualities such as durability, hardness, and heat and stain resistance may also be stressed in electroplating, depending on the physical properties of the plated article and on customer requirements. In most applications, customer requirements are such that alternative metal finishing techniques are unacceptable. However, many electroplaters provide other metal finishing services, such as anodizing, application of conversion coatings, electropolishing, buffing, etc.

30. Electroplaters are divisible into two categories: non-precious metal electroplaters, who perform nickel, copper, cadmium, chromium and other non-precious metal electroplating services; and precious metal electroplaters, who perform precious metal electroplating services. Precious metal electroplaters generally apply non-precious metal undercoatings to all articles before finishing the surface with a precious metal electroplate.

31. Electroplaters purchase approximately \$350 million in metal finishing products and equipment annually, of which non-precious metal electroplaters purchase approximately \$250 million and precious metal electroplaters purchase approximately \$100 million. The industry is comprised of several thousand independent job shops and numerous "captive" shops in various types of fabricating and assembly plants.

32. Electroplating is a complex art, the practice of which necessitates close cooperation between the electroplater and his metal finishing suppliers in such matters as design of processes, control and testing of pre-plating and plating baths, design and application of proper cleaners and pre-finishing materials, testing and analysis of plated samples, and design, maintenance and repair of proper equipment.

33. Most electroplaters are heavily dependent on their suppliers of metal finishing products and equipment for technical service and advice. In time of short supply of nickel or cadmium, the metal generally is rationed by the metal producers. At least since 1967, nickel and cadmium have been in short supply and one or both metals have been rationed by the metal producers. Since some metal finishing suppliers are allocated the scarce metal in anode form, many electroplaters may be dependent upon such suppliers for a continuing supply of such anodes.

34. The heavy dependence of the electroplater on his suppliers of metal finishing products and equipment tends to enable a large full-line supplier to influence, persuade, or compel electroplaters to purchase all products in the supplier's line and to refrain from purchas-

ing competing lines. This tendency manifests itself especially where such a supplier is a source of a metal in short supply.

C. Preparing Plastics For Plating

35. In the past several years, plating on plastics has become commercially feasible, as new techniques of a proprietary nature have been developed for preparing plastic surfaces for electroplating. It is likely that the use of plated plastics will grow at a great rate within the next several years.

36. At the time of the acquisitions described in Paragraphs 40 and 41, herein, only a small number of processes for pre-plating plastics had been proved commercially feasible.

37. Shortly before the acquisitions described in Paragraphs 40 and 41, herein, Hooker had developed a short-cut process for preparing plastics for plating.

38. In the period immediately preceding the acquisition described in Paragraph 40, herein, Udylite was conducting plating on plastics research. Udylite was also distributing proprietary pre-plating plastics solutions produced by one of the few companies in the field.

39. Shortly before the acquisition described in Paragraph 41, herein, Sel-Rex proposed to begin, or began, distribution of solutions for pre-plating plastics materials, employing a proprietary process owned by a foreign company.

IV. THE ACQUISITIONS

A. Udylite

40. On November 6, 1967, directors of Hooker and Udylite reached a definitive agreement on the acquisition of Udylite by Hooker. The agreement was approved by the stockholders of both companies on December 21, 1967. The acquisition was consummated on January 2, 1968, with Udylite transferring to Hooker substantially all of its assets and liabilities in exchange for shares of Hooker common and preferred stock with an aggregate value of approximately \$41 million.

B. Sel-Rex

41. On April 4, 1968, directors of Hooker and Sel-Rex reached a definitive agreement on the acquisition of Sel-Rex by Hooker. The agreement was approved by the stockholders of both companies on July 18, 1968. The acquisition was consummated on July 24, 1968, with Sel-Rex transferring to Hooker substantially all of its assets

and liabilities in exchange for shares of Hooker common and preferred stock with an aggregate value of approximately \$45 million. The acquisition of Sel-Rex by Hooker and the acquisition of Hooker by Occidental occurred on the same day.

V. VIOLATIONS CHARGED

42. The effect of the acquisition of Udyllite, and the effect of the acquisition of Sel-Rex, has been, or may be, substantially to lessen competition or to tend to create a monopoly in the manufacture and/or sale of metal finishing products, equipment and services, and in the manufacture and/or sale of various categories thereof, in the United States, in the following ways, among others:

(a) Actual and potential competition between Hooker and Udyllite and between Hooker and Sel-Rex has been eliminated;

(b) The substitution of Occidental and Hooker, with their multi-divisional manufacturing, marketing, research and financial strengths, tends unduly to increase barriers to entry of new competition and to deprive smaller limited-line rivals of an equal opportunity to compete, cumulatively entrenching Occidental and Hooker in their acquired dominant position;

(c) Leading suppliers of electroplating products, equipment and services have been absorbed into and combined with one of the largest industrial corporations in the United States which occupies a leading position in the production and sale of closely related metal finishing products;

(d) Concentration may be substantially increased and the possibility of deconcentration lessened;

(e) Udyllite and Sel-Rex have been eliminated as independent competitive factors;

(f) Occidental and Hooker have obtained a substantial competitive advantage over smaller limited-line competitors;

(g) Other suppliers of metal finishing products and equipment may combine by acquisition or merger in order to obtain the types of capabilities obtained by Occidental and Hooker by virtue of the acquisition;

(h) Occidental and Hooker have obtained the opportunity to influence, persuade or compel metal finishers to purchase most or all of their requirements from Occidental and Hooker or to refrain from purchasing competing lines.

43. The acquisition of Udyllite, as alleged in Paragraph 42, above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

44. The acquisition of Sel-Rex, as alleged in Paragraph 42, above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisitions of The Udyllite Corporation, a corporation, hereinafter sometimes referred to as Ulylite, and Sel-Rex Corporation, a corporation, hereinafter sometimes referred to as Sel-Rex, by respondents named in the caption above, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated Section 7 of the Clayton Act, as amended, 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 thirty (30) days, and having received no comments from interested members of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Occidental Petroleum Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 10889 Wilshire Boulevard, Los Angeles, California.

Proposed respondent Hooker Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of

business located at 277 Park Avenue, New York, New York.

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

ORDER

I

It is ordered, That respondent, Occidental Petroleum Corporation ("Occidental"), and respondent, Hooker Chemical Corporation ("Hooker"), and their officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors, and assigns, in connection with the sale or distribution in the United States of metal finishing products or equipment sold by them in the United States, forthwith cease and desist from:

(1) Selling any such product or equipment on the condition, agreement or understanding, express or implied, that the purchaser will buy any other such product or equipment;

(2) Refusing to sell any such products and/or equipment unless the purchaser purchases or agrees to purchase other such products and/or equipment;

(3) Refusing to service or guarantee any such product or equipment unless the purchaser purchases or uses other such products and/or equipment;

(4) Offering and/or selling any such products and/or equipment in a combined quantity at lower unit prices than an equivalent total quantity of any of the products and/or equipment offered and/or sold singly, unless such difference in price can be cost justified by respondents;

(5) Acting as a distributor of any such products and/or equipment except on a non-exclusive basis for a period of ten (10) years from the effective date of this order.

II

It is further ordered, That respondents, Occidental and Hooker, and their subsidiaries, for a period of ten (10) years from the effective date of this order, shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern, corporate or noncorporate, manufacturing, marketing, distributing or selling any product or equipment for or to the metal finishing industry in the United States where the proposed acquisi-

Decision and Order

77 F.T.C.

tion includes assets used in any such activity in the United States: *Provided*, That, where the proposed acquisition is of non-metal finishing assets from any concern, corporate or noncorporate, manufacturing, marketing, distributing or selling any product or equipment for or to the metal finishing industry in the United States, Occidental shall notify the Federal Trade Commission of the proposed acquisition no less than sixty (60) days prior to consummation when the time schedule permits, but if the time schedule does not permit such notice, then notification shall be given as promptly as possible: *Provided further*, That the prior approval of or notification to the Federal Trade Commission shall not be required in connection with routine purchases in the ordinary course of business of such items as materials, supplies, equipment and machinery. Nothing in this paragraph shall be construed to sanction any acquisition not subject to prior Commission approval.

III

It is further ordered, That in the event that Occidental, Hooker or any of their subsidiaries, during a period of ten (10) years from the effective date of this order, rations any metal finishing product or equipment which it sells in the United States, it will ration such product or equipment on a fair and equitable basis in the United States giving due consideration to each customer's requirements and prior purchases of the product from Occidental, Hooker or any of their subsidiaries, and respondents must establish the fairness and equitableness of such rationing, if required to do so by the Federal Trade Commission.

IV

It is further ordered, That Occidental, Hooker and/or their subsidiaries, during a period of ten (10) years from the effective date of this order, shall grant, for reasonable royalties to all financially responsible applicants making written request therefor and not then offering their customers a competitive process (unless willing to cross-license Occidental, Hooker and/or their subsidiaries for reasonable royalties), a license for the United States to any or all processes conceived or developed by them prior to the effective date of this order for preparing plastics for plating.

V

It is further ordered, That Occidental, Hooker and/or their subsidiaries, for a period of ten (10) years from the effective date of

710

Decision and Order

this order, shall make available annually a list of prices charged in the United States for each of their standard metal finishing products, equipment and services, when such services are separable from the price of the products and/or equipment, and will distribute a copy of such list to any United States customer upon request.

VI

It is further ordered, That Occidental and Hooker shall within sixty (60) days from the date of service of this order and annually thereafter on the anniversary date of this order for a period of ten (10) years, and thereafter when requested to do so by the Federal Trade Commission, submit to the Commission a written report setting forth in detail the manner and form in which it has complied and is complying with this order.

VII

It is further ordered, That respondent Occidental shall notify the Commission at least thirty (30) days prior to any proposed change in either corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a corporate successor, and that this order shall be binding on any such successor.

VIII

It is further ordered, That Occidental and Hooker shall forthwith distribute a copy of this order to each of their operating divisions, to each of their metal finishing customers in the United States, and for a period of five (5) years from the effective date of this order to each new metal finishing customer in the United States.

IN THE MATTER OF

SIEGEL TRADING COMPANY, INC., ET AL.

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

Docket C-1750. Complaint, June 5, 1970—Decision, June 5, 1970

Consent order requiring a Chicago, Ill., seller of advisory and managed accounts services in the commodity futures market to cease exaggerating the earnings and profits to be realized by its customers, and failing to disclose the possible losses which may be incurred.

Complaint

77 F.T.C.

COMPLAINT

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

PARAGRAPH 1. Siegel Trading Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 100 North LaSalle Street in the city of Chicago, State of Illinois.

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

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale and sale of advisory and managed accounts services in commerce incident to the purchase and sale of commodity futures.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for sometime last past have caused, monies, contracts and other commercial paper and printed materials in connection with said advisory and managed accounts services, to be sent by United States mail from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of said advisory and managed accounts services and into the placing of substantial sums of money with respondents for investment in the commodity futures market, respondents have made and published and caused to be published certain statements, claims and representations in newspapers, circulars, booklets and other materials distributed by them, respecting the

amount and consistency of profits and earnings and the risks of invested capital.

Among and typical of the foregoing, but not all inclusive thereof, are the following:

You gain more leverage for your money than in any other financial situation. For example, in the recent Pork Bellies Market, for every \$1,000 that my customers have invested, they were controlling 30,000 pounds of merchandise—roughly worth \$11,000. (Incidentally we called that market perfectly and that \$1,000 is now worth \$3,000.) Such situations are the rule rather than the exception in our business.

Trades of this type are exceptional in the Stock Market, but situations where large profits can be realized are more often the rule rather than the exception in the commodity markets.

. . . our program is designed to break even, even if we make money on only 4 of every 10 trades. (Our actual batting average is a profit on 70-75% of all trades.)

. . . it is conceivable to generate profits consistently.
the commodity markets are *designed for profits*. . . .

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

1. That the aforestated profits or earnings and other represented profits or earnings were typical and could be expected in the trading of commodity futures.

2. That commodity trading is without risk and that profits can be generated consistently in the trading of commodity futures.

3. That a profit is realized on a majority of commodity trades.

4. That significant, consistent returns on invested capital can be made in commodity trading without indicating that losses can also be incurred.

PAR. 6. In truth and in fact:

1. The represented profits or earnings were typical and could not be expected in the trading of commodity futures.

2. Commodity trading is not without substantial risk and profits cannot be generated consistently in the trading of commodity futures.

3. A profit is not realized on a majority of commodity trades.

4. Substantial losses can be and are often incurred in the trading of commodity futures.

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

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of services of the same general kind and nature.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the placing of substantial sums of money with respondents for investment in the commodity futures market and into the purchase of respondents' advisory and managed accounts services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days and having duly considered the comments filed thereafter pursuant to § 2.34(b) of its Rules now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its

complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Siegel Trading Company, 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 100 North LaSalle Street in the city of Chicago, State of Illinois.

Respondent Joseph E. Siegel is an officer of said corporation and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Siegel Trading Company, Inc., a corporation, and its officers, and Joseph E. Siegel, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of advisory and managed accounts services incident to the purchase and sale of commodity futures, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any stated profits or earnings were or are typical, or could be expected, or would be realized in the trading of commodity futures.

2. Representing, directly or by implication, that commodity trading is without risk; or that profits can be generated consistently in the trading of commodity futures.

3. Representing, directly or by implication, that a profit is realized on a majority of commodity trades.

4. Making any representation, directly or by implication, respecting profits or earnings which have been or may be earned from trading in commodity futures without clearly and conspicuously stating in immediate connection therewith that losses can also be incurred.

5. Misrepresenting in any manner, or by any means, the profits or earnings which have been or may be derived or the degree or extent of the risk of loss incurred by persons placing money with the respondents for investment or making use of respondents' advisory service or managed accounts service.

