

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

4. Retain all receipts required to be obtained by this order for a period of five (5) years from the date of each said receipt.

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IN THE MATTER OF

McDONALD'S CORPORATION, ET AL.—DOCKET C-1897  
D'ARCY ADVERTISING COMPANY, ET AL.—DOCKET  
C-1898

ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT

*Complaints, April 12, 1971—Dismissal order, June 5, 1973.*

Order reopening proceedings, vacating and setting aside orders to cease and desist, 78 F.T.C. 606 and 616 (36 F.R. 11,289 and 11,284) and dismissing proceedings against a major chain of hamburger restaurants and its advertising agency which charged them with unfair methods of competition and unfair and deceptive acts and practices in their use of a "sweepstakes" sales promotion device.

SEPARATE CONCURRING STATEMENT OF COMMISSIONERS PAUL RAND  
DIXON AND MARY GARDINER JONES

Although we dissented from the Commission's dismissal of the complaint in *D. L. Blair Corp.*, we agree that because there is an identity of interest in the two matters before us and *D. L. Blair Corp.*, fairness requires that the order be set aside as to respondents herein. We therefore, concur that the proceedings herein be vacated and set aside, and that the proceedings be dismissed.

ORDER REOPENING PROCEEDINGS, SETTING ASIDE CEASE AND DESIST  
ORDERS AND RULING ON PETITION TO STAY

McDonald's Corporation and McDonald's System, Inc., by a petition filed on March 26, 1973, and D'Arcy-MacManus & Masius, Inc., successor to D'Arcy Advertising Company by a petition filed on March 29, 1973, request, pursuant to Rule 3.72(b)(2) of the

Commission's Rules of Practice, that the Commission reopen these proceedings and set aside the orders to cease and desist against them which have become final [78 F.T.C. 606 and 616 for the respective cases].

Respondent D'Arcy-MacManus & Masius, Inc., has also filed a petition to stay all further requests for compliance reports pending the Commission's consideration of its petition.

The Acting Director of the Bureau of Consumer Protection and complaint counsel have filed answers to the petitions to reopen. In the answers, it is stated that complaint counsel joins with respondents in urging that the orders to cease and desist be set aside by the Commission.

The two cases have been consolidated by the Commission for the purpose of ruling on the petitions. The basis for the requests to reopen the proceedings and set aside the cease and desist orders is the Commission's action in *D. L. Blair Corp.*, 3 Trade Reg. Rep. ¶20,223 (D. 8837, 1973). There, the Commission after the hearing and initial decision by the administrative law judge, concluded that the facts did not demonstrate a violation of Section 5 of the Federal Trade Commission Act. Respondents in the instant proceedings were participants in the same activities involved in the *D. L. Blair Corp.*, matter and were initially named in the complaint. The respondents, however, instead of litigating the allegations in the complaint signed consent agreements which resulted in the cease and desist orders.

In view of the decision in the *D. L. Blair Corp.* matter and the identity of the facts as they relate to respondents, it is determined by the Commission that it is not in the public interest to continue the orders here. Accordingly,

*It is ordered*, That the proceedings be, and they hereby are, reopened and the orders to cease and desist heretofore entered in these matters be, and they hereby are, vacated and set aside and the proceedings be, and they hereby are, dismissed.

*It is further ordered*, That the petition by respondent D'Arcy-MacManus & Masius, Inc., to stay any further requests to file compliance reports is dismissed as moot.

Commissioners Dixon and Jones submitting a concurring statement.

## Order

## IN THE MATTER OF

## THE PAPERCRAFT CORPORATION

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

*Docket 8779. Complaint, April 10, 1969—Modified order, June 6, 1973.*

Order modifying an earlier order dated June 30, 1971, 36 F.R. 15662, 78 F.T.C. 1352, as modified September 9, 1971, 79 F.T.C. 420, which required a major manufacturer and distributor of gift wrapping paper and ribbons with headquarters in Pittsburgh, Pa., to divest itself of an acquired gift wrapping firm, by deleting Paragraph IX of the modified order which prohibited the divesting company from selling to any direct customers of the divested company for a three-year period.

## MODIFIED ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Seventh Circuit a petition to review the order to cease and desist issued herein on June 30, 1971, and modified by the Commission on September 9, 1971; [79 F.T.C. 420] and [78 F.T.C. 1352] the Court on January 25, 1973, having rendered its decision, and on February 22, 1973, having entered its final order affirming and enforcing the Commission's order with modification by the deletion of Paragraph IX; and the time in which to file a petition for certiorari having expired without either party having filed such a petition;

*Now therefore, it is ordered,* That the aforesaid order to cease and desist be modified, in accordance with said final order of the Court of Appeals, to read as follows:

## I

*It is ordered,* That respondent, the Papercraft Corporation, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within six (6) months from the date of service upon it of this order, shall divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and goodwill, acquired by the Papercraft Corporation as a result of its acquisition of CPS Industries, Inc., together with all additions and improvements thereto, of whatever description, made since the acquisition.

Order

82 F.T.C.

## II

*It is further ordered,* That none of the assets, properties, rights or privileges described in Paragraph I of this order shall by such divestiture be transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of the Papercraft Corporation, or to anyone who is not approved in advance by the Federal Trade Commission.

## III

If respondent divests the assets, properties, rights and privileges, described in Paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by the Papercraft Corporation, and if respondent then distributes all of the stock in said corporation or corporations to the stockholders of the Papercraft Corporation, in proportion to their holdings of the Papercraft Corporation stock, then Paragraph II of this order shall be inapplicable, and the following Paragraphs IV and V shall take force and effect in its stead.

## IV

No person who is an officer, director, or executive employee of the Papercraft Corporation, or who owns or controls, directly or indirectly, more than one (1) percent of the stock of the Papercraft Corporation, shall be an officer, director or executive employee of any new corporation or corporations described in Paragraph III, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation or corporations described in Paragraph III.

## V

Any person who must sell or dispose of a stock interest in the Papercraft Corporation or the new corporation or corporations, described in Paragraph III, in order to comply with Paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of the Papercraft Corporation.

## VI

*It is further ordered,* That no method, plan or agreement of divestiture to comply with this order shall be adopted or implemented by respondent save upon such terms and conditions as shall first be approved by the Federal Trade Commission.

## VII

*It is further ordered,* That pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the company to be divested which may impair its present capacity or market value, unless such capacity or value is restored prior to divestiture.

## VIII

*It is further ordered,* That for a period of ten (10) years from the date of service of this order upon it respondent shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the manufacture, production, sale or distribution of any decorative gift wrap product, nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern.

## IX

As used in this order, the acquisition of assets includes any arrangement by the Papercraft Corporation with any other party, pursuant to which such other party discontinues manufacturing any of the products described in Paragraph VIII of this order under a brand name or label owned by such other party and thereafter distributes any of said products under any of Papercraft's brand names or labels.

## X

As used in this order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

1784

FEDERAL TRADE COMMISSION DECISIONS

1784

Commission

IN THE MATTER OF  
GENERAL MOTORS CORPORATION, ET AL.

*Docket 8907. June 7, 1978.*

F.T.C. "Commission" authorizing and requesting the Consul or Vice-Consul of the United States in Frankfurt, Federal Republic of Germany (or legal designate) to administer the oath or affirmation to certain employees, German nationals, of a German subsidiary of General Motors Corporation necessary to take their depositions and to preside at the taking of deposition upon oral examination.

IN THE MATTER OF THE DEPOSITIONS OF W. SCHINDLER, W. SCHMIDT-BRUCKEN AND DR. K. BUDDE, CITIZENS OF THE FEDERAL REPUBLIC OF GERMANY

COMMISSION

*To all to whom these presents may come, greeting:*

*Whereas*, The depositions of W. Schindler, W. Schmidt-Brucken, and Dr. K. Budde, all of whom are employees of Adam Opel AG, Russelheim, Germany, a subsidiary of General Motors Corporation, have been authorized by Order of Administrative Law Judge Ernest G. Barnes for use in the matter of General Motors Corporation, et al, Docket No. 8907; and

*Whereas*, It appears that the proposed witnesses are German nationals residing in the Federal Republic of Germany;

*Now, therefore*, The Federal Trade Commission authorizes and requests the Consul or Vice-Consul of the United States in Frankfurt, Federal Republic of Germany, (or their designate authorized by the law thereof or by the law of the United States to administer oaths and affirmations) to administer the oath or affirmation to these individuals necessary to take their depositions and to preside at the taking of the deposition upon oral examination.

By direction of the Federal Trade Commission.

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IN THE MATTER OF

FELCO SPORTS PRODUCTS, INC., ET AL.

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

*Docket C-2413. Complaint, June 8, 1978—Decision, June 8, 1978.*

1784

## Complaint

Consent order requiring three affiliated manufacturers of athletic and recreational apparel in New York City, and Hatillo, Puerto Rico, among other things to cease misrepresenting the fiber content of their products and to run a retraction in their catalogs concerning the garments that were deceptively advertised.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, Hatillo Apparel Corporation, a corporation and Nathan Katz, individually and as an officer of said corporations hereinafter sometimes referred to as respondents have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, 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. Respondents Felco Sports Products, Inc., a corporation, and Felco Athletic Wear Company, Inc., a corporation, are organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Hatillo Apparel Corporation, a corporation, is organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico.

Respondent Nathan Katz is an officer of the corporate respondents. He formulates, directs and controls the acts, practices and policies of the said corporate respondents including those hereinafter set forth.

Respondents Felco Sports Products, Inc., and Felco Athletic Wear Company, Inc., are manufacturers of athletic and recreational apparel with their office and principal place of business located at 113-119 Fourth Avenue, New York, New York. Respondent Hatillo Apparel Corporation, is a manufacturer of athletic and recreational apparel with its office and principal place of business located in Hatillo, Puerto Rico.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale in

commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of such textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were Bermuda softball pants which were not labeled to show:

- (1) The true generic name of the fibers present; and
- (2) The true percentage of the fibers present by weight.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects.

1. Samples, swatches and specimens used to promote or effect sales of respondents' garments were not labeled to show information required by Section 4(b) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid rules and regulations.

2. The fiber content of linings, fillings and paddings incorporated in jackets for warmth rather than for structural purposes were not set forth separately and distinctly, in violation of Rule 22 of the aforesaid rules and regulations.

PAR. 5. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 6. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

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

PAR. 7. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

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

PAR. 8. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 9. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale, and distribution of certain products, namely boys' jackets in commerce. In the course and conduct of their business, 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 New York 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. 10. In the course and conduct of their business, and for the purpose of inducing the sale of their said products, namely boys' jackets, respondents have made certain statements in Felco's 1972 sales catalogue, No. 89 relative to the fiber content composition of the said jackets.

Among such statements in the Felco sales catalogue No. 89, are "all wool melton jackets" and "full wool quilted lined sleeves and body."

PAR. 11. By the use of the aforesaid statements the respondents represent, and have represented, directly that said jackets were composed entirely of "wool," whereas in truth and in fact, said products were not composed entirely of wool, but contained substantially different fibers and amounts of fibers than represented. In addition, the use of the aforementioned statements in respondents' catalogue No. 89 implied that the wool used in the advertised product was new wool while in fact such wool was reprocessed.

PAR. 12. The acts and practices of respondents as set forth in Paragraphs Ten and Eleven above, have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admis-

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondents Felco Sports Products, Inc., and Felco Athletic Wear Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Hatillo Apparel Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico.

Respondent Nathan Katz, is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations.

Respondents Felco Sports Products, Inc., and Felco Athletic Wear Company, Inc., are manufacturers of wool and textile products with their office and principal place of business located at 113-119 Fourth Avenue, New York, New York. Respondent Hatillo Apparel Corporation, is a manufacturer of athletic and recreational apparel with its office and principal place of business located in Hatillo, Puerto Rico.

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 Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, and Hatillo Apparel Corporation, a corporation, their successors and assigns, and their officers, and Nathan Katz, individually and

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

A. Misbranding textile fiber products by:

1. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to affix labels showing the respective fiber content and other required information to samples, swatches or specimens of textile fiber products subject to the aforementioned Act which are used to promote or effect sales of such textile fiber products.

3. Failing to set forth separately and distinctly the fiber content of any linings, interlinings, fillings or paddings if incorporated in the textile fiber products for warmth rather than for structural purposes, or if any express or implied representations are made as to their fiber content.

B. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

*It is further ordered,* That respondents Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, Hatillo Apparel Corporation, a corporation their successors and assigns, and their officers, and Nathan Katz, individually and as an officer of said corporations, and respondents' representa-

tives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

*It is further ordered,* That respondents Felco Sports Products, Inc., a corporation, Felco Athletic Wear Company, Inc., a corporation, Hatillo Apparel Corporation, a corporation, their successors and assigns, and their officers, and Nathan Katz, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of coats, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from falsely and deceptively advertising or misrepresenting in any manner, or by any means the character or amount of constituent fibers contained in such products.

*It is further ordered,* That respondents shall publish in their catalogs distributed over the twelve-month period from the effective date of this order a retraction on the same pages, or in the same portions of the catalogs as will appear the textile fiber products previously deceptively advertised in the catalogs, or if the previously deceptively advertised textile fiber products do not appear in said catalogs then the retraction shall appear on the same pages or in the same portions of the catalogs as are advertised similar products as that of the previously deceptively advertised textile fiber products, or if no similar products are advertised then in a part or portion of the catalogs of at least equal prominence to the part or section of the catalogs where the deceptively advertised textile fiber products had been previously deceptively adver-

tised, in print of equal size and prominence as that of the original false, misleading and deceptive advertisements; and said retraction shall include a statement that identifies the deceptively advertised fiber products, sets forth that these fiber products were previously misleading and deceptively advertised by the respondents as all wool or as all wool melton, and accurately describes what the true fiber content of these products were at the time they were misleadingly and deceptively advertised.

*It is further ordered,* That respondents shall send by registered mail a copy of this order to each of their customers who have purchased any of the above misleadingly and deceptively advertised fiber products during the three year period prior to the effective date of this order.

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

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

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

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

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IN THE MATTER OF  
THE HEARST CORPORATION, ET AL.  
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 8832. Complaint, January 15, 1971\*—Decision, June 19, 1973.*

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\* Complaint reported on page 218 herein.

Consent order requiring a New York City magazine subscription firm and its wholly-owned subsidiary located in Sandusky, Ohio, among other things to cease misrepresenting the purpose of the call or solicitation; misrepresenting the consumers or class of consumers afforded the opportunity of purchasing respondent's products or services; representing that any merchandise or service is free or that any merchandise is available for a price less than customary or regular; misrepresenting the savings accorded purchasers; failing to cancel subscriptions when representations have been made that said subscriptions are cancellable; misrepresenting the terms or conditions of payments; misrepresenting the nature, kind or legal characteristics of any document; attempting to harass or intimidate customers allegedly delinquent in their payments; failing to inform customers of their right to cancel their contract within three business days; misrepresenting respondent's intention to institute legal proceedings; failing to disclose to customers certain information regarding credit transactions; and furnishing means and instrumentalities of misrepresentation or deception. Respondents are further ordered to cease making sales solicitations through third parties who do not agree to be bound by the order; dealing with any who continue on their own the prohibited practices; and must institute a program of continuing surveillance to determine dealer compliance.

#### DECISION AND ORDER

The Commission having issued its complaint on May 27, 1970, charging the consenting parties named in the caption hereof with violation of the Federal Trade Commission Act; and the consenting parties having been served with a copy of the complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver of the provisions of Section 2.34(d) of its rules which provides that the consent order procedure shall not be available after issuance of complaint; and

The consenting parties and counsel for the Commission having executed an agreement containing a consent order, an admission by consenting parties 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 consenting parties that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same,

and the agreement containing consent order having been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. The Hearst Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 959 Eighth Avenue, in the city of New York, State of New York.

Periodical Publishers' Service Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One North Superior Street, in the city of Sandusky, State of Ohio.

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

#### ORDER

##### I

*It is ordered,* That the Hearst Corporation, a corporation, and Periodical Publishers' Service Bureau, Inc., a corporation, consenting parties herein, their successors or assigns, and said consenting parties' respective officers, representatives, employees, salesmen, agents or solicitors, licensees or franchisees, as each, directly or through any corporate device may from time to time be engaged in connection with the advertising, offering for sale or sale of magazine subscriptions, or a combination of magazine subscriptions and a book or books (hereinafter sometimes referred to as products or services) to consumers (as "consumer" is hereinafter defined) by subscriptions to purchase such products or services through a "paid-during-service" plan, or through a "cash sale" plan (as "paid-during-service" and "cash sale" are hereinafter defined), or in the collection of any delinquent paid-during-service or cash sale subscription account, obtained through door-to-door mail or telephone solicitation, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that a consenting party is primarily engaged in conducting a survey, quiz or contest, or any other activity other than the soliciting of a

paid-during-service plan or a cash sale plan; or misrepresenting in any manner the purpose of the solicitation.

2. Representing, directly or indirectly, that any offering of either the paid-during-service or cash sale plan is being made only to specially selected consumers by a consenting party unless such is a fact; or misrepresenting, in any manner, the consumers or class of consumers being offered the opportunity to purchase said plans.

3. Representing, directly or indirectly, that any parts or components of either plan are free or without cost, or are provided as a gift(s) to either the consumer, or a person or persons designated by such consumer, or without cost or charge in connection with the purchase of either plan unless the stated price of the parts and/or components required to be purchased in order to obtain such free part(s) or gift(s) is the same or less than the customary and usual price at which such parts and/or components required to be purchased have been sold separately from such free part(s) or gift(s), and in the same combination if more than the said parts or components are required to be purchased for a substantial period of time, in the consenting parties' recent and regular course of business in the area in which the offering is made; provided that nothing herein shall prevent the offering of "split orders" as part of the offer of either plan, pursuant to which the consumer designates and/or selects one or more of the magazine subscriptions in either plan to be directed and sent to a third-party consumer, without such third-party consumer paying any part of the price or cost of the plan.

4. Representing, directly or indirectly, that the price or cost of either plan covers only the cost of mailing, handling, editing, printing or any other element of the cost, or is at or below such element of cost; or that any price is a special or reduced price unless it constitutes a significant reduction from the consenting parties' established selling price at which such products or services have been sold in substantial quantities for the offering in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to the consumer; however, nothing herein shall prohibit the making of truthful comparisons with newsstand or other prices.

5. Refusing or failing, upon request, to cancel or terminate a consumer's paid-during-service plan if it has been repre-

sented, directly or indirectly, that such plan is cancellable at any time.

6. Representing, directly or indirectly, that the paid-during-service plan cannot be cancelled on the ground that the subscriptions in the agreement have been forwarded to the publishers of the selected magazines and that there is a financial commitment to such publishers for the term of the subscriptions; or refusing to cancel a consumer's agreement for future payments for any other deceptive reasons.

7. Failing, clearly, at the time of initial consumer sales contact and at each subsequent consumer sales contact up to verification, either in person or by telephone, to disclose at the outset thereof, either orally or in writing, and after the initial greeting, the name of the individual representative, the applicable consenting party's name, its local town location, that the purpose of such sales contact is to offer for sale the paid-during-service and/or cash sale plan; or misrepresenting, directly or indirectly, the purpose of any contact with a prospective consumer.

8. Making any reference or statement concerning "50 cents a week," "60 months," or any other statement as to the sum of money or duration or period of time in connection with a solicitation for a paid-during-service plan which plan does not in fact provide, at the option of the consumer, for the payment of the stated sum at the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, methods, rate or time of payment actually made available to the consumer.

9. Representing, directly or indirectly, that the contract or agreement to purchase the plan is only a "preference list," "guarantee," or "route slip," or any kind of document other than a contract or agreement; or misrepresenting in any manner the nature, kind or import of any document purporting to bind the consumer: *Provided, however,* That when such contract or agreement includes a guarantee of service to the consumer, nothing shall prohibit reference to such guarantee in a form such as "agreement and guarantee" or "contract and guarantee."

10. Failing, clearly, to reveal orally and in writing to each consumer before the signing of any agreement for either the paid-during-service or cash sale plan, that the document to be

signed by the consumer will become, after three (3) business days, binding on the consumer.

11. Harassing consumers who are allegedly delinquent in their payments due, pursuant to the sale of either a paid-during-service or cash sale plan, through repeated daily telephone contacts, or telephone contacts at unreasonable hours, or by use of abusive language, or by improperly contacting third parties and disseminating defamatory information about such consumers to such parties, or by any other similar means.

12. Representing, directly or indirectly, in the event of alleged nonpayment or alleged delinquency by a consumer arising out of his alleged purchase of either a paid-during-service or cash sale plan, that such consumer's general or public credit rating may be adversely affected, unless the information concerning the consumer's alleged delinquency or alleged nonpayment is referred to a bona fide credit agency.

13. Failing, clearly, in the event any reference is made to referral to a collection agency of the consumer's account, arising out of the sale of either a paid-during-service or cash sale plan, or of a contact from a collection agency, to disclose in each such contact that such collection agency is an operating division of the applicable consenting party, if such is the fact; or representing that such collection agency is an independent bona fide collection agency unless such is the fact.

14. Representing that legal action may be instituted, unless there is a good-faith intention to institute legal action against each alleged delinquent consumer to whom such representation is made; or misrepresenting, in any manner, the action or results of any action which may be taken to effect payment of such debt; provided that nothing herein contained shall preclude the right of the applicable consenting party to retain counsel and to utilize the services of counsel to protect its interest and such counsel shall not in any respect be prohibited from collecting amounts due from consumers.

15. Failing, in connection with the allowing of a consumer to sign an agreement for the purchase of the products and services described herein, to provide, both orally and in writing, as part of such agreement, a statement that the consumer may cancel such agreement within three (3) business days by directing and mailing postpaid a notice of intent to cancel, in

any form, including the return of the agreement, to the consenting party's address set forth on such agreement.

16. Failing to furnish each consumer, at the time of his signing of the agreement to purchase either a paid-during-service or cash sale plan of a consenting party, a duplicate of the original of the agreement setting forth the names of the magazines being subscribed to and the total cost to the consumer, and at the same time failing to furnish such consumer, either as a part of said agreement or separately, with a document setting forth the number of issues of each magazine per year and the respective price of each magazine subscription contained in the agreement.

17. Failing, in the event a coupon book is used, after the paid-during-service plan ordered has been orally verified with the consumer as to the months of service, selection of magazines and the payment program, to use a coupon book containing the number of coupons in the amounts called for in the duplicate original agreement provided to the consumer in accordance with Paragraph 16 hereof, which coupon book shall contain:

(a) on an inside cover, or other conspicuous place, a statement setting forth the number of coupons, the amount of each coupon, and the total amount represented by coupons; and

(b) a legend asking the consumer to verify the number of coupons against said consumer's original agreement.

18. Failing, after verification (as defined in Paragraph 17 hereof), in the event any magazine subscription set forth in the original plan agreement (provided the consumer in accordance with Paragraph 16 hereof) is changed or altered for any reason, before any coupon book is sent to the consumer, to send the consumer a new agreement reflecting such change or alteration.

19. Failing or refusing to cancel all or any portion (at the consumer's option) of a consumer's agreement to purchase a paid-during-service or cash sale plan offered by a consenting party hereunder when said consenting party has, in good faith, determined that a misrepresentation prohibited by this order has been made to such consumer, *Provided, however*, That the sole fact of such good-faith determination shall not be admissible against a consenting party in any proceeding

brought to recover penalties for the alleged violation of any paragraph of this order.

20. Failing, clearly and conspicuously, to designate in writing and disclose orally at or before the signing by the consumer of an agreement to purchase the products or services described herein, on the same side of the page as, and above or adjacent to, the place for the consumer's signature:

- (a) the total cash price;
- (b) the down payment;
- (c) the unpaid balance of the cash price;
- (d) the number, amount, and due dates or period of payments scheduled to satisfy the payments of the agreement;

and, if all or any portion of the purchase price is being financed:

- (e) the amount financed; and,
- (f) the rate of the finance charge, if any, expressed as the annual percentage rate.

21. In the event of the discontinuance of publication, or other unavailability of any magazine subscribed for, at any time during the life of the agreement, failing to offer the subscriber the right to substitute one or more magazines or other publications, or any other arrangement which shall be satisfactory to the consumer.

22. Placing in the hands of consenting parties' employees, or other authorized representatives offering either the paid-during-service or cash sale plans to consumers, the means and instrumentalities, by and through which consumers may be misled or deceived in the manner or by the acts and practices prohibited by this order.

## II

*It is further ordered,* That the Hearst Corporation, through Periodical Publishers' Service Bureau, Inc., and Periodical Publishers' Service Bureau, Inc., or any future subsidiary:

- (a) (1) Deliver by hand or by registered mail a copy of this decision and order to the executive personnel of the operating divisions of a consenting party selling or promoting the products or services by and through the plans included in this order; (2) deliver by hand or registered mail a copy of this decision and order to each of the branch managers and their

employees, salesmen, agents and solicitors, and present and future franchisees and licensees of a consenting party, who may from time to time be so engaged; and (3) require the applicable consenting party's present and future licensees and franchisees to deliver a copy of this decision and order to each of said licensees' and franchisees' employees, agents, salesmen, solicitors, independent contractors, and other representatives so engaged.

(b) Require persons described in (a) (1) and (2) heretofore to sign a form returnable to the applicable consenting party clearly stating such person's intention to conform his business practices to the requirements of this order.

(c) Inform each person so described in Paragraph (a) (1) and (2) hereof that such consenting party shall not contract with any such persons for the solicitation of the magazine subscription selling plans described herein, unless such person agrees to and does file notice with the applicable consenting party that it will conform its business practices to the provisions contained in this order.

(d) Shall not use the services of such persons described in (a) (1) and (2) above to solicit the subscription offerings described herein, if such person will not agree to so file such notice and conform his business practices to the provisions of this order.

(e) So inform such persons described in Paragraph (a) (1) and (2) above that such consenting party is obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order.

(f) Initiate a program of continuing supervision of the activities of the applicable consenting party's branches, licensees and franchisees, provided that such consenting party shall not be required to initiate any program of supervision of franchisees or licensees which would contravene the antitrust or any other laws.

(g) Terminate the authority of any such persons described in Paragraph (a) (1) or (2) above, who are revealed by the aforesaid program of supervision or otherwise, to be continuing on their own to engage in the acts or practices prohibited by this order, to the extent that said order applies to such persons, provided that such violations of any terms of this order by any such present or future licensees, franchisees,

representatives or employees will not be deemed a violation of this order by the consenting parties, unless the applicable consenting party fails to terminate or cancel the authority of such persons within a reasonable time of determining, in good faith, a violation of this order.

### III

*It is further ordered,* That the consenting parties herein shall notify the Commission at least thirty (30) days prior to any proposed change in the structure of either of the corporate consenting parties, 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 respective corporations which may affect compliance obligations arising out of this order.

*It is further ordered,* That the consenting parties 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.

As used in this order, the term "consumer" is defined as the party who is a natural person to whom the applicable consenting party offers to sell or sells magazine subscriptions, or a combination of magazine subscriptions and a book or books, the subject of the transaction and of the paid-during-service or cash sale plan, on its subscription agreement forms primarily for personal, family or household purposes.

As used in this order, the term "cash sale" shall mean the sale to a consumer by the applicable consenting party of magazine subscriptions, or a combination of magazine subscriptions and a book or books, by means of a consenting party's original subscription agreement, obtained by that category of sales personnel referred to in the trade as "field representatives" or "traveling crews," who sell such agreements during the course of door-to-door solicitations in consideration of one immediate full payment or two payments, as contrasted with the more numerous products or payments involved in paid-during-service plans.

As used in this order, the term "paid-during-service" shall mean the sale by an applicable consenting party to a consumer of two or more magazine subscriptions, or a combination of magazine subscriptions and a book or books, by its door-to-door, mail or telephone solicitation, and subsequent signing of a consenting party's

original subscription plan agreement at the consumer's home, office or at an exhibit (*i.e.*, a temporary booth in space leased by a consenting party at a fair, store exhibit or like facility, wherein and whereby the plans described herein are offered to consumers) or confirming any renewal thereof, the cost of which subscriptions is paid or payable in equal, successive payments over a period of two or more successive months, or sooner, at the option of the consumer.

As used in this order, the phrase "door-to-door, mail or telephone solicitation" of a consenting party's subscription agreements relates only to such solicitation of consumers used by the applicable consenting party to initiate or effect sales or collections pursuant to a paid-during-service plan or a cash sale plan.

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IN THE MATTER OF

SONOTONE CORPORATION

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

*Docket C-2414. Complaint, June 19, 1973—Decision, June 19, 1973.*

Consent order requiring an Elmsford, New York, manufacturer, distributor, and repairer of hearing aids, among other things to cease imposing customer and territorial restrictions and exclusive dealing requirements on its dealers; price-fixing activities; requiring its dealers to furnish names and addresses of customers; and failing to include and deliver any express product warranty.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C. Section 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Sonotone Corporation (hereinafter sometimes referred to as "Sonotone") is a corporation organized

under the laws of the State of New York. Its principal office and place of business is at Saw Mill River Road, Elmsford, New York.

Sonotone is a wholly-owned subsidiary of Clevite Bearing Division of Gould, Incorporated, a Delaware corporation. Gould's principal office and place of business is at 8550 West Bryn Mawr, Chicago, Illinois. Gould, Incorporated, is a diversified manufacturer of many industrial and consumer products, including electronic instruments and systems, electrical products, automotive, industrial nickel-cadmium and specialty type batteries and mechanical products for vehicles, and machinery parts and filters. Gould's 1970 sales are reported at \$339 million.

PAR. 2. Respondent is engaged in the business of manufacturing, distributing, selling and repairing of Sonotone brand hearing aids. It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of its business, respondent ships or causes to be shipped hearing aids from its facilities in the State of New York to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondent's hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondent's selected retail dealers in the course and conduct of their business of offering for sale and selling Sonotone hearing aids are in substantial competition in commerce with one another and with dealers engaged in the offering for sale and selling of other brands of hearing aids; and respondent is in substantial competition in commerce with others engaged in the manufacturing, distributing, selling and repairing of hearing aids.

PAR. 5. Trade and commerce in the United States in hearing aids is substantial. In 1970, the total value of shipments amounted to approximately \$50 million at the manufacturers' prices, and is estimated to have exceeded \$175 million at retail prices. In 1970, about fifty domestic manufacturers, domestic subsidiaries of foreign manufacturers and domestic distributors of foreign manufacturers sold approximately 510,000 hearing aids through 5,000 retail dealers who employed over 10,000 salesmen.

PAR. 6. In 1970, the top four companies in the hearing aid industry accounted for approximately 50 percent of the dollar value of shipments; the top eight companies, including respondent

Sonotone, accounted for approximately 70 percent of such shipments; and the top twenty companies accounted for over 90 percent of the industry's shipments.

PAR. 7. In 1970, respondent Sonotone, which has manufactured hearing aids since 1929, was the fifth largest hearing aid manufacturer with sales in excess of three million dollars, representing approximately 6 percent of the market.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process. The success of the established manufacturers in selling their products has been based primarily on their ability to secure the services of retail dealers to sell their products to the hearing handicapped. Similarly, to be successful, new entrants into the market must secure distribution through established dealers.

Approximately 60 percent of the retail sales of hearing aids occur as a result of initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to the dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about \$100, the average retail price to the hearing handicapped is about \$350. More than 50 percent of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

PAR. 9. In the distribution and sale of their hearing aids, a number of the manufacturers of hearing aids for many years have used and pursued parallel courses of business behavior.

Among such courses of business behavior are the following:

- (1) distributing and selling their hearing aids directly to selected retail dealers, refusing to deal with all other dealers;
- (2) entering into agreements or understandings with their dealers, which agreements:

- (a) establish territories within which the dealers may advertise and sell their products,
  - (b) require exclusive dealing in the manufacturers' products,
  - (c) assign sale or purchase quotas to be met by their dealers,
  - (d) encourage or require the use of the manufacturers' brand name in the dealers' trade styles,
  - (e) restrict the classes of customers with whom their dealers may deal,
  - (f) require their dealers to submit the names and addresses of their customers to the manufacturers,
  - (g) permit the manufacturers to terminate such agreements without cause upon thirty days notice, and
  - (h) in the event of such termination permit the manufacturers to repurchase the terminated dealers' products purchased from such manufacturers;
- (3) refusing to issue the express product warranties to consumers unless and until their dealers have reported the names and addresses of their customers to the manufacturers;
- (4) encouraging or requiring their dealers to participate in cooperative advertising programs which preclude mention that the dealers offer competing brands of hearing aids for sale;
- (5) engaging in extensive national brand advertising of their hearing aids;
- (6) suggesting to their dealers retail prices for hearing aids which are often more than 300 percent above the manufacturers' prices to the dealers, with such dealers generally selling at such suggested retail prices;
- (7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

The effect of the aforesaid parallel courses of business behavior has been to eliminate intra-brand and to hinder or suppress inter-brand competition in the hearing aid industry, and, further, to aggravate the unfair and anticompetitive effect of the acts and practices of the respondent as alleged in Paragraphs Ten and Eleven.

PAR. 10. In the course and conduct of its business of manufacturing, distributing, selling and repairing its hearing aids in commerce, respondent pursues the following course of action:

A. It requires its selected dealers to sell Sonotone hearing aids within assigned geographic territories;

B. It requires its selected dealers to deal exclusively in Sonotone hearing aids;

C. It fixes, establishes, controls and maintains the retail prices at which its selected dealers sell or repair Sonotone hearing aids;

D. It prohibits its dealers from dealing with certain potential customers;

E. It prohibits others, not its dealers, from dealing in, or repairing Sonotone products;

F. It appropriates and uses for its own purposes the names and addresses of its dealers' customers.

PAR. 11. In furtherance of this course of action, respondent has been and now is engaged in the following acts and practices, among others:

(1) Respondent uses agreements or understandings which

(a) require a dealer to sell Sonotone hearing aids within an assigned territory;

(b) require a dealer to achieve a sales quota by selling Sonotone hearing aids within the assigned territory under a penalty of reducing or redefining the assigned territory, or appointing additional dealers therein;

(c) permit or encourage its dealers to use the Sonotone brand name in conjunction with a geographic identification of the dealers' locations in the dealers' trade styles on condition that its dealers sell only Sonotone hearing aids;

(d) require a dealer to submit to the respondent the name and address of each customer who purchases Sonotone hearing aids;

(e) require a dealer to participate in Sonotone cooperative advertising and other sales promotion programs;

(f) allow for termination of the contract upon dealer's violation of any provision thereof;

(2) Respondent refuses to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial exclusivity so that he is not in competition with any other dealer selling Sonotone hearing aids;

(3) Respondent refuses to issue its express product warranty unless and until the dealer from whom the hearing aid was purchased forwards the retail purchaser's name and address to Sonotone;

(4) Respondent offers to its dealers a cooperative advertising plan which provides that Sonotone will not share the cost of any dealer advertisement outside of his assigned territory, or which

mentions in any way that the dealer also offers for sale other brands of hearing aids;

(5) Respondent supplies its dealers only with names of prospective customers arising in such dealers' assigned territories;

(6) Respondent issues to its dealers price lists or provides other means by which the retail prices for Sonotone hearing aids are set forth;

(7) Respondent issues to its dealers lists of retail repair prices set by the respondent;

(8) Respondent instructs its dealers not to solicit, sell, or make delivery of any of respondent's hearing aids outside of their assigned territory;

(9) Respondent refuses to sell Sonotone repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

(10) Respondent refuses to supply Sonotone promotional and advertising materials, price lists, hearing aid specifications or performance information to all dealers;

(11) Respondent prohibits its selected dealers from selling Sonotone hearing aids to other dealers of hearing aids;

(12) Respondent provides in its standard form dealer contract that it has the right to terminate the contract, at any time, upon ninety days notice to the dealer;

(13) Respondent provides in its standard form contract that in the event of termination:

(a) Sonotone has the right to repurchase the terminated dealer's inventory of Sonotone products;

(b) Sonotone, or a person designated by Sonotone, has the right to purchase from the terminated dealer any and all of the dealer's signs, equipment and fixtures relating to such dealer's business in Sonotone hearing aids; and

(c) the terminated dealer is not entitled to any compensation for the good will of his business.

PAR. 12. The acts and practices of respondent enumerated hereinabove in Paragraphs Ten and Eleven, taken either individually or collectively, are oppressive, coercive, unfair and anticompetitive, and have the tendency and capacity of hindering, suppressing or eliminating competition, or constitute unfair methods of competition, or unfair acts or practices, with the following effects, among others:

(1) Competition between respondent and other manufacturers of hearing aids has been hindered and suppressed;

(2) Competition among dealers dealing in Sonotone hearing aids has been eliminated;

(3) Such dealers have been deprived of their freedom to select their customers and otherwise to function as free and independent businessmen;

(4) Such dealers have been deprived of their ownership of, and freedom to maintain, confidential lists of their customers;

(5) Competition among dealers dealing in Sonotone hearing aids and dealers dealing in other brands of hearing aids has been hindered and suppressed;

(6) Retail dealers of hearing aids have been deprived of their freedom to act in the best interests of the hearing-impaired public;

(7) Consumers have been deprived of their right to fair and impartial recommendations from dealers in the selection of hearing aids for the alleviation of their hearing impairment;

(8) Consumers have been deprived of the benefits of free competition;

(9) Those engaged in the repairing or servicing of hearing aids in competition with respondent have been deprived of their right to repair or service Sonotone hearing aids.

PAR. 13. The aforesaid acts and practices of respondent have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual or potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition in commerce and unfair 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 named in the caption hereto with violation of the Federal Trade Commission Act, and the 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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 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 Sonotone Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at Saw Mill River Road, city of Elmsford, State of New York. Sonotone is a wholly-owned subsidiary of Gould, Incorporated, a Delaware Corporation. Gould's principal office and place of business are at 8550 West Bryn Mawr, Chicago, Illinois.

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

#### ORDER

##### I

*It is ordered*, That respondent Sonotone Corporation, and its subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, advertising, offering for sale, sale or repair of its own brand name or trademark hearing aids, or related products, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving, or enforcing by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, communicated expectation or request, or in any other manner, any arrangement or method of doing business with a dealer of hearing aids and/or accessories which has the purpose or effect of precluding or preventing a dealer from selling the product of one or more other hearing aid manufacturers;

2. Refusing to make available promptly upon request

(a) a hearing aid, accessory or any written materials

necessary to fit and sell such hearing aid or accessory, to any dealer engaged in the sale of hearing aids, if respondent makes such products available to any other dealer located within 100 miles of the requesting dealer, or

(b) a repair or replacement part or any written materials necessary to repair or replace such hearing aid, to any person engaged in the repair of hearing aids when requested for such purpose, if respondent makes repair or replacement parts available to any dealer for such purpose;

*Provided, however,* That if no other provision of this order is violated thereby:

(1) respondent may require as a condition to the availability directly from it of any of its products that the dealer or person referred to in 2(a) or (b) above has received instruction or met standards necessary for the fitting, servicing and/or repairing of respondent's hearing aids which are required at that time of all then existing dealers of respondent's products or all persons then engaged in the repair of respondent's products, so long as such instruction, if made available to any dealer or person, is made available by respondent on reasonable terms and conditions to all dealers or persons wanting to deal in or repair respondent's product,

(2) respondent may refuse to make available directly from it any of its products to any dealer or person if such requesting dealer or person is able promptly to obtain the product from another dealer or distributor at respondent's price to dealers for a single unit plus a reasonable handling charge, and

(3) respondent may refuse to make available directly from it any of its products to any dealer or person on other grounds related to that dealer's or person's professional competence or ethical conduct, so long as such refusals are uniformly made where such grounds exist:

3. Entering into, maintaining, preserving, or enforcing, by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, communicated expectation or request, report of sale, warranty limitation, use of names or addresses of a dealer's customers, or in any other manner, any arrangement or method of doing business which has the purpose or effect of restricting or limiting

