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charges against them, we have concluded that said respondents are entitled to appointed counsel. Accordingly,

It is ordered, That the general counsel for the Commission take all necessary and appropriate measures to secure adequate legal representation for the above-named respondents.

Commissioners Dixon and Thompson would have closed this matter for lack of public interest in further proceedings.

IN THE MATTER OF
CUBCO, INC., ET AL.

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

Docket C-2670. Complaint, May 22, 1975—Decision, May 22, 1975

Consent order requiring a Nutley, N.J., manufacturer and distributor of ski bindings and related items, among other things to cease anticompetitive practices having the effect of enforcing and fixing the dealers' resale prices for certain of respondents' products.

Appearances

For the Commission: *David W. DiNardi*

For the Respondents: *Richard F. McMahon, Lafferty, Rowe, McMahon, McKeon, Newark, N.J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Cubco, Inc., a corporation, and Mitchell H. Cubberley, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. §45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Cubco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located on Baltimore St., Nutley, N.J.

Respondent Mitchell H. Cubberley is an officer of the corporate

respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein-after set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents have been and are now engaged in the manufacture, sale and distribution of Cubco ski bindings and related items, hereinafter referred to as said products. Respondents' products are subsequently distributed and sold to authorized dealers throughout the United States for resale to the general public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have been and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that respondents have sold and caused and now cause said products to be shipped from the state in which they are manufactured or warehoused to other States of the United States for resale and distribution through authorized dealers.

PAR. 4. Except to the extent that competition has been hampered or restrained as set forth in this complaint, respondents have been and are now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of said products.

PAR. 5. Respondents, in combination, agreement or understanding with certain of their authorized dealers, or with the cooperation or acquiescence of other of their dealers, have for the last several years been engaged in a planned course of action to fix, establish and maintain certain specified uniform prices at which said products are resold. In furtherance of said planned course of action, respondents have for the past several years engaged in the following acts and practices, among others:

(a) Regularly furnishing their dealers with price lists and necessary supplements thereto containing certain resale or retail prices;

(b) Establishing agreements, understandings, arrangements with their dealers, one or more of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a dealership, that such dealers will maintain certain resale or retail prices;

(c) Informing their dealers, by direct and indirect means, that respondents expect and require such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated.

(d) Requiring their dealers to agree not to sell or otherwise supply or furnish their products to anyone who is not an authorized dealer of the respondents;

(e) Soliciting and obtaining from their dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or

offers to sell, or sells said products at prices lower than certain resale or retail prices; and

(f) Directing their salesmen, representatives and other employees to secure and report information identifying any dealer who fails to adhere to and maintain certain resale or retail prices.

PAR. 6. By means of such acts and practices, including but not limited to the foregoing, respondents, in combination, agreement, or understanding with certain of their authorized dealers and with the acquiescence of other authorized dealers, have established, maintained and pursued a planned course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 7. The aforementioned acts and practices of respondents have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and constitute unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Cubco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 20 Baltimore St., Nutley, N.J.

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

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 respondents Cubco, Inc., a corporation, its successors and assigns, and its officers, and Mitchell H. Cubberley, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, distribution, offering for sale or sale of ski bindings, ski equipment and related items or any other product (hereinafter referred to in this order as "said products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling, influencing or enforcing in any way or to any extent, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Requiring any dealer or prospective dealer to enter into an oral or written agreement or understanding that such dealer or prospective dealer will maintain any resale or retail price for any of said products as a condition of buying any of said products.

C. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer, person or firm who does not adhere to any resale or retail price for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

D. Directing or requiring any of respondents' salesmen, or any other agent, representative, or employee, directly or indirectly, to report any dealer who does not adhere to any resale or retail price for any of said products, or to act on such reports by refusing or threatening to refuse sales to dealers so reported.

E. Refusing or threatening to refuse any sales to any dealer or prospective dealer, either directly or indirectly, or threatening to cancel or terminate, or cancelling or terminating any dealer or prospective dealer because of any resale or retail price observed, maintained, or advertised by the dealer or prospective dealer for any of said products.

F. Suggesting, for three (3) years from the date on which this order becomes final, any resale price whatsoever for any of said products, by price list, discount schedule, invoicing procedure, pre-pricing of commodities or their containers, or by any other means, to any reseller whose resale prices are not or cannot lawfully be controlled by respondents in the manner prescribed by law and this order.

G. Requiring, from any dealer charged with price cutting or failure to adhere to any resale or retail price, a promise or assurance to adhere to any resale or retail price for any of said products as a condition precedent to any future sales to said dealer.

H. Publishing, disseminating or circulating any price list, price book, price tag, advertising or promotional material, or other document indicating any resale or retail price without stating on each page of such list, book, tag, advertising or promotional material or other document that the price is suggested or approximate.

I. Requiring or inducing by any means, any dealer or prospective dealer to refrain, or to agree to refrain from reselling any of said products to any other dealer or distributor.

Provided, however, Nothing hereinabove shall be construed to waive, limit or otherwise affect the right of respondents to enter into, establish, maintain and enforce in any lawful manner any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

II. *It is further ordered,* That the respondent corporation herein shall within sixty (60) days after service upon it of this order, mail a copy of this order to each of its dealers in the Commonwealth of Puerto Rico, the District of Columbia, and in those states which now, or at any time in the future, do not permit fair trade contracts, and, during the five (5) year period of time following the date of service of this order, to all future dealers in these jurisdictions at the time said dealers are opened as accounts, under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

III. *It is further ordered,* That the respondent corporation herein shall forthwith distribute a copy of this order to each of its operating divisions and to all of its sales personnel and shall instruct each sales person employed by it now or in the future to read this order and to be familiar with its provisions.

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

V. *It is further ordered*, That the respondents herein for a period of five (5) years from the date of this signing establish and maintain a file of all records referring or relating to respondents' refusal to sell said products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondents' refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of five (5) years from the date hereof, submit a report to the Commission's Boston Regional Office listing the names and addresses of all dealers with whom respondents have refused to deal over the preceding year, a description of the reason for the refusal and the date of the refusal.

VI. *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.

VII. *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.

EXHIBIT A

(Letterhead of Cubco, Inc.)

Dear Dealer:

Cubco, Inc. has entered into an agreement with the Federal Trade Commission relating to the distributional activities and pricing policy of Cubco, Inc. A copy of the consent order entered into pursuant to that agreement is enclosed herewith.

Cubco, Inc. has entered into this agreement solely for the purpose of settling a dispute with the Commission, and the agreement and consent order is not to be construed as an admission by Cubco, Inc. that it has violated any of the laws administered by the Commission, or that any of the allegations in the complaint are true and correct. Instead, the order merely relates to the activities of Cubco, Inc. in the future.

In order that you may readily understand the terms of the consent order, we have set forth the essentials of the agreement with the Commission, although you must realize that the consent order itself is controlling rather than the following explanation of its provisions:

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(1) Our dealers in your area are free to set their own retail or resale prices for our products.

(2) Cubco, Inc. will not solicit, invite or encourage dealers, or any other persons to report any dealer in your area not following any retail or resale price for any of said products, and, furthermore, will not act on any such reports sent to it.

(3) Cubco, Inc. will not require or induce its dealers in your area to refrain from advertising said products at any price or from selling or offering said products at any price to any person.

Sincerely yours,

Mitchell H. Cubberley
President

Enclosure

IN THE MATTER OF
CIRCULATION BUILDERS, INC., ET AL.

Docket 9004. Order, May 27, 1975

Denial of complaint counsel's motion to amend notice order in complaint to indicate possibility that consumer redress may be sought.

Appearances

For the Commission: *Ralph E. Stone* and *Paul D. Hodge*.

For the respondents: *Stephen M. Koolpe*, Mill Valley, Calif.

ORDER DENYING MOTION TO AMEND NOTICE ORDER

By order of Apr. 28, 1975, the administrative law judge certified to the Commission complaint counsel's motion to amend the notice order accompanying the complaint in this matter to indicate the possibility that the Commission may seek consumer redress against respondents pursuant to Section 206 of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. While complaint counsel is generally free in Section 5 actions to ask for relief over and beyond that described in the notice order, if any, consumer redress under the Magnuson-Moss Act for acts or practices that occurred prior to its enactment is permitted by statute only where the Commission's intent to seek such relief is set out in the complaint or notice order. The law judge has accordingly certified complaint counsel's motion to amend to the Commission.

No information was presented to the Commission at the time this complaint was issued as to why consumer redress should be sought and none is now offered. Accordingly,

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It is ordered, That the aforesaid motion to amend the notice order in this matter be, and it hereby is, denied.

IN THE MATTER OF

ATLANTIC INDUSTRIES, INC. T/A ATLANTIC
PORTRAIT PLAN, ETC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8941. Complaint, Oct. 31, 1973-Decision, May 28, 1975

Consent order requiring a Miami, Fla., marketer of a photographic enlargement plan and three wholly-owned subsidiaries, among other things to cease using deceptive means to sell its photographic enlargement plan and to collect accounts.

Appearances

For the Commission: *Edward J. Carnot* and *W. Roland Campbell*.
For the respondents: *Hogan & Hartson*, Wash., D.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 Atlantic Industries, Inc., a corporation trading as Atlantic Portrait Plan and Atlantic Film Club, International Baby Care, Inc., Atlantic International Distributors, Inc., a corporation trading as Amalgamated Credit and Collection Bureau, National Direct Corporation, a corporation trading as National Advertised Products and International Album Plan, Jeffrey J. Weiss and Martin Osman, individually and as officers of said corporations, Lawrence Hahn, individually and as an officer of Atlantic Industries, Inc., and Richard S. Labovitz, individually and as an officer of International Baby Care, Inc. and Atlantic International Distributors, Inc., 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 Atlantic Industries, Inc., trading as Atlantic Portrait Plan, and Atlantic Film Club, is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Florida, with its principal office and place of business located at 720 N.W. 27th Ave., Miami, Fla.

Respondent is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of photographs, photograph albums, photograph enlargements, photograph certificates, film and other merchandise to the public.

Trading as Atlantic Portrait Plan, respondents' primary effort is to sell a photograph enlargement plan. Under the plan, the customer is entitled to have a specified number of enlargements developed by respondents over a ten-year period. The customer pays a lump sum, often on credit, for the plan and receives a book of coupons which are redeemable for the enlargements. Said products are sold chiefly by door-to-door salesmen.

Respondent, trading as Atlantic Film Club, operates a film processing service.

PAR. 2. Respondent International Baby Care, 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 at 720 N.W. 27th Ave., Miami, Fla. Respondent International Baby Care, Inc. is a wholly-owned subsidiary of respondent Atlantic Industries, Inc.

Respondent is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of baby furniture products to the public.

PAR. 3. Respondent Atlantic International Distributors, Inc., trading as Amalgamated Credit and Collection Bureau, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The corporate address is 720 N.W. 27th Ave., Miami, Fla. Respondent Atlantic International Distributors, Inc. is a wholly-owned subsidiary of respondent Atlantic Industries, Inc.

Respondent Atlantic International Distributors, Inc. is now and for some time last past has been engaged in the collection of delinquent accounts for respondents Atlantic Industries, Inc. and International Baby Care, Inc.

PAR. 4. Respondent National Direct Corporation, trading as National Advertised Products and International Album Plan, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 720 N.W. 27th Ave., Miami, Fla. Respondent National Direct Distributors, Inc. is a wholly-owned subsidiary of respondent Atlantic Industries, Inc.

Respondent is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of photographs,

photographic albums, photograph enlargements, photograph certificates, film and other merchandise to the public.

Trading as National Advertised Products, respondents' primary effort is to sell a photograph enlargement plan. Under the plan, the customer is entitled to have a specific number of enlargements developed by respondents. The customer pays a lump sum, often on credit, for the plan and receives a book of coupons which are redeemable for the enlargements. Said products are sold chiefly by door-to-door salesmen.

Trading as International Album Plan, respondents' primary effort is to sell a photograph enlargement plan. Under the plan, the customer is entitled to have a specific number of enlargements developed by respondents. The customer pays a lump sum, often on credit, for the plan and receives a book of coupons which are redeemable for the enlargements. Said products are sold chiefly by door-to-door salesmen.

PAR. 5. Respondents Jeffrey J. Weiss and Martin Osman are officers and directors of the four corporate respondents. Said individual respondents formulate, direct, and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of the individual respondents is 720 N.W. 27th Ave., Miami, Fla.

Respondent Lawrence Hahn is a director of the four corporate respondents and an officer of respondent Atlantic Industries, Inc. In such positions, the respondent cooperates with the other individual respondents in formulating, directing, or controlling the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of respondent Hahn is 2285 Peachtree Rd., N.W., Atlanta, Ga.

PAR. 6. Respondent Richard S. Labovitz is an officer of the corporate respondents International Baby Care, Inc. and Atlantic International Distributors, Inc. and as such cooperates with the other individual respondents in formulating, directing, and controlling the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of respondent Labovitz is 720 N.W. 27th Ave., Miami, Fla.

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

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COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Four, Five and Seven hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 8. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused their said photographs, photograph albums, photograph enlargements, photograph certificates, film and other merchandise to be sold in various States of the United States, and when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in the various States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents, respondents' agents, representatives, and employees have made and are now making numerous statements and representations directly or by implication:

1. That customers will receive a free prize, gift, or bonus, namely a photograph album, with the purchase of the photograph enlargement plan.

2. That certain but not all prospective customers will be offered the opportunity to purchase the plan at a "special" or "reduced" price and that those prospective customers not offered the "special" or "reduced" price must pay a higher price.

3. That the "special" or "reduced" price is below respondents' established regular retail price for the plan.

4. That the "special" or "reduced" price is an "at cost" price which includes only the cost to respondents of materials needed to print and develop the enlargements.

5. That in order to purchase the plan at the "special" or "reduced" price, the prospective customer must agree to display the photograph album in his home.

6. That the special price is being offered for the purpose of advertising and promoting respondents' product.

PAR. 10. In truth and in fact:

1. The album is not free. Its cost is included in the cost of the plan.

2. Every prospective customer is afforded the opportunity to purchase the plan at the "special" or "reduced" price and no customer has to pay any higher price.

3. The "special" or "reduced" price is not below respondents'

established regular retail price for the plan. Respondents have never offered nor sold the plan for any price higher than the so-called "special" or "reduced" price.

4. The so-called "special" or "reduced" price is not an "at cost" price. The cost of the plan includes more than the cost to respondents of materials needed to print and develop the enlargements.

5. The prospective customers agreement to display the photograph album is not a prerequisite to respondents selling the plan to the customer at the so-called "special" or "reduced" price.

6. Respondents' offer is made for the purpose of realizing a profit on the sale and not for the purpose of advertising or promoting their portrait plan.

Therefore, the statements and representations set forth in Paragraph Nine are misleading and deceptive.

PAR. 11. In the further course and conduct of their business, respondents' agents, representatives, and employees represent directly or by implication that single enlargements are regularly sold by respondents for \$7 each. Using \$7 to demonstrate value, respondents further represent:

1. That the 100 coupon plan which has a base selling price of \$189.95 is valued at over \$700.

2. That the 90 coupon plan which has a base selling price of \$149.95 is valued at over \$630.

3. That the 60 coupon plan which has a base selling price of \$89.95 is valued at over \$420.

4. That customers will save the difference between the value of the plan and the base selling price.

PAR. 12. By and through the use of the statements set out in Paragraph Eleven above, and others of similar import and meaning but not expressly set out herein, respondents have represented, and are now representing that on a regular basis for a reasonably substantial period of time in the recent regular course of their business, single enlargements have been sold for \$7 and further that \$7 per enlargement would be a fair and accurate amount to use in determining the value of respondents' plan.

PAR. 13. In truth and in fact respondents have not sold single enlargements for \$7 or any other price on a regular basis for a reasonably substantial period of time in the recent regular course of their business. Therefore, any demonstration of value or savings based on the \$7 amount such as those described in Paragraph Eleven above would be false and misleading.

In addition, when demonstrating savings to customers, respondents neglect to add to the base price of the plan an amount equal to seventy-

five cents per enlargement which respondents charge to cover mailing and handling. Respondents failure to include this extra charge is deceptive and misleading because such failure results in an inflation of the amount a customer might save by purchasing the plan.

PAR. 14. In the course and conduct of respondents' operations of the film processing service and for the purpose of inducing the purchase of their developing and printing services, respondents, respondents' agents, representatives and employees have made, and are now making statements and representations to customers that customers will receive a fresh roll of Kodak film FREE with each roll of film developed or printed by respondents. The free film has been offered by respondents continuously for a period of at least two years.

PAR. 15. By and through the use of the word "free" respondents have represented directly or through implication that the price charged by respondents is for processing alone and does not include any payment for the film.

PAR. 16. In truth and in fact, the film is not free because the continuous offer of free film over a long period of time has resulted in the price for the processing service alone becoming the regular price for the processing *and* film in combination.

Thus, the statements and representations set out in Paragraphs Fourteen and Fifteen above are false and misleading.

PAR. 17. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

PAR. 18. The aforesaid acts and practices of respondents, as alleged herein, 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.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Four, Five, Six and Seven hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 19. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused their

said photographs, photograph albums, photograph enlargements, photograph certificates, film, baby furniture, and other merchandise to be sold in various States of the United States, and when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in various States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 20. In the course and conduct of respondents' business, respondents' agents, representatives and employees have made, directly or by implication, statements and representations to customers that contracts entered into between respondents and said customers are non-cancellable. However, such statements are false, misleading and deceptive because in truth and in fact state statutes provide customers a right to cancel.

PAR. 21. 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.

PAR. 22. The aforesaid acts and practices of respondents, as alleged herein, 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.

COUNT III

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four, Five, Six and Seven hereof are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 23. In the course and conduct of their aforesaid business, respondents now cause and for some time last past have caused, letters, forms, and various other kinds and types of documents relating to the collection of delinquent accounts to be deposited in the United States mail and transmitted to persons located in the various States of the United States, all of which constitute a part of the course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 24. In the furtherance of their business and for the purpose of inducing the payment of purportedly delinquent accounts, respondents, respondents' agents, representatives, and employees have sent or

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caused to be sent through the mail, letters, forms, and other printed matter in which respondents make certain statements and representations to purportedly delinquent customers. Typical, but not all inclusive of said statements and representations are the following:

1.

(Letterhead)

AMALGAMATED CREDIT AND COLLECTION BUREAU

P. O. Box 781

Bronx General Post Office

Bronx, New York 10451

Dear Debtor:

Your account has been given to us by Atlantic Portrait Plan * * *. To avoid an embarrassing and expensive situation, mail your check or money order *directly* to Amalgamated Credit and Collection Bureau.

2. The above account has for value received been assigned to the credit bureau for immediate collection procedure.

3.

FINAL NOTICE

* * * You are hereby notified that we intend to institute legal action to be brought against you for the entire balance of your account.

4. If you do not see fit to take care of this small matter and honor your obligations, we will have no alternative but to collect through the Small Claims Court.

PAR. 25. By and through the use of the aforesaid statements and representations described in Paragraph Twenty-Four above and others of similar import not specifically set out herein, respondents represent and have represented directly or by implication that:

1. Delinquent accounts have been turned over or assigned for value by respondents to an independent credit and collection bureau.

2. If payments are not made, respondents will institute suit or take other legal action to collect the outstanding amount due.

PAR. 26. Such statements as those set out in Paragraphs Twenty-Four and Twenty-Five above are false and misleading because in truth and in fact:

1. Accounts have not been turned over nor assigned for value to independent credit and collection bureaus. Respondent Atlantic International Distributors, Inc., trading as Amalgamated Credit and Collection Bureau, is a corporate device used by Atlantic Industries, Inc. and the individual respondents. By use of the device respondents hope to effect the collection of delinquent accounts by representing and implying that the respondent Amalgamated Credit and Collection Bureau is an independent collection agency.

2. Respondents seldom, if ever, bring legal action to collect delinquent accounts.

PAR. 27. In the further course and conduct of the collection of

delinquent accounts, respondents send or cause to be sent forms, such as the one entitled "Demand for the Payment of Debt," designed to mislead the recipient into believing that such form was sent by a government body or one of its agencies.

PAR. 28. 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 payment of said delinquent accounts because of such erroneous and mistaken belief.

PAR. 29. The aforesaid acts and practices of respondents, as alleged herein, 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.

ORDER AMENDING COMPLAINT

By motion filed Dec. 19, 1973, complaint counsel have requested that the complaint be amended in several respects and that certain amendments be made to the preamble to the form of order served with the complaint. Specifically, complaint counsel have requested that the following amendments be made:

(1) Amend subparagraph 2 of Paragraph Ten of Count I to read:
2. Most, if not all, prospective customers are afforded the opportunity to purchase the plan at the "special" or "reduced" price and no customer has to pay any higher price.

(2) Amend subparagraph 3 of Paragraph Ten of Count I to read:
3. The "special" or "reduced" price is not below respondents' established regular retail price of the plan. Respondents seldom, if ever, have offered or sold the plan for any price higher than the so called "special" or "reduced" price.

(3) Amend subparagraph 1 of Paragraph Eleven of Count I to read:
1. That the 100-coupon plan, which has a base selling price of \$199.95 or \$189.95, is valued at over \$700.

(4) Add as subparagraph 7 to Paragraph Nine of Count I:
7. That the purpose of respondents' initial contact with the prospect is to give a surprise which was sent out by respondents' public relations department, or to present an advertising promotion or to make a courtesy presentation, or is for purposes other than the sale of respondents' products or services.

(5) Add as subparagraph 7 to Paragraph Ten of Count I:

7. Respondents' sales representatives have not and are not contacting persons in their homes or places of business primarily for the purpose of giving a surprise, presenting an advertising promotion or making a courtesy presentation. To the contrary, the primary purpose for contacting such persons has been and is to sell respondents' products or services.

(6) Amend the preamble to Part I of the proposed order by substituting the word "or" for the word "and" in the tenth line thereof.

(7) Amend the preamble to Part II of the proposed order by substituting the word "or" for the word "and" in the eleventh line thereof.

Respondents have filed response to complaint counsel's motion to amend the complaint wherein they do not oppose the proposed amendments numbered (1), (2), (3), (6) and (7) as set forth above. Complaint counsel have filed a reply to respondents' response, which reply has been accepted into the record and duly considered by the undersigned.

The authority of the administrative law judge to amend a complaint is set forth in Section 3.15(a)(1) of the Commission's Rules of Practice. This section of the rules provides that the administrative law judge may allow appropriate amendments to the complaint, if a determination of the controversy on the merits will be facilitated thereby; *Provided, however,* That motions for amendments may be allowed only if the amendment is "reasonably within the scope of the original complaint." Motions for other amendments to complaints shall be certified to the Commission.

The Commission has on a number of occasions interpreted this section. In *Standard Camera Corp., et al.*, 63 F.T.C. 1238, 1266 (1963), the Commission stated:

Our Rules of Practice empower a hearing examiner to allow appropriate amendments to the pleadings. Such power is limited, however, by the caveat that the amendments must be "reasonably within the scope of the proceeding initiated by the original complaint." Where the effect of the amendment is an alteration of the underlying theory behind the complaint, or where it alleges substantially different acts or practices on the part of the respondent, or where it requires different determinations with respect to the belief that a violation has occurred and that the public interest is jeopardized, the hearing examiner is without power to authorize it. * * * Thus, where an amendment impinges upon powers exercised exclusively by the Commission, it is incumbent upon the hearing examiner to certify the matter to us for determination.

Accordingly, the requested amendments to subparagraphs 2 and 3 of Paragraph Ten and subparagraph 1 of Paragraph Eleven of Count I are hereby granted. These subparagraphs will be amended as requested by complaint counsel and as set forth hereinabove. These amendments involve a restatement of the methods employed by respondents in effectuating the practices alleged to be unlawful and are so related to

the subject matter of this proceeding as to be well within the scope of the original complaint (see *Capitol Records Distributing Corporation*, 58 F.T.C. 1170, 1174 (1961)). Further, such amendments will facilitate a determination of this controversy on the merits and will not prejudice the public interest or the rights of the parties hereto.

The amendments requested to be made to the preamble of Part I and the preamble of Part II of the form of order served with the complaint are hereby denied. In the first place, the form of order served with the complaint is not a pleading as such; it does not set forth allegations of unlawful conduct. Further, it is subject to change or modification if record facts adduced during the proceeding make such further or other relief necessary.

Additionally, the proposed amendments to the form of order are insignificant. The conjunction "and" is construed to mean "as well as," and is a reference to "either or both." "And" is sometimes interpreted as if it were the word "or," which is an alternative, a choice of either.

Since the form of order, at least at this juncture, does not require such precision of language as does the complaint, and since the requested amendments are in reality insignificant, the proposed amendments to the preamble to Part I and the preamble to Part II of the form of order served with the complaint are denied.

The amendments requesting the *additions* of subparagraph 7 to Paragraph Nine and subparagraph 7 to Paragraph Ten fall in a different category. These proposed amendments allege substantially different acts and practices from those which are alleged in the complaint. The complaint in Paragraphs Nine and Ten is concerned with "free" gifts with the purchase of respondents' products, or "special" or "reduced" prices in connection with the sale of respondents' products. The amendments proposed by complaint counsel are new subparagraphs to be added to the complaint which challenge as unlawful respondents' initial contact with a prospective purchaser. There is no indication in the complaint, as issued, that the proposed respondents' initial contact with prospective purchasers is unlawful, or is to be challenged in this proceeding. Accordingly, complaint counsel's motion to add a subparagraph 7 to Paragraph Nine and a subparagraph 7 to Paragraph Ten will be certified to the Federal Trade Commission for a determination, since it appears that these proposed amendments, if warranted, are beyond the authority vested in the administrative law judge. Accordingly,

It is ordered, That subparagraphs 2 and 3 of Paragraph Ten and subparagraph 1 of Paragraph Eleven of Count I are amended to read as follows:

Subparagraph 2 and 3 of Paragraph Ten of Count I to read:

Order Amending Complaint

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2. Most, if not all, prospective customers are afforded the opportunity to purchase the plan at the "special" or "reduced" price and no customer has to pay any higher price.

3. The "special" or "reduced" price is not below respondents' established regular retail price of the plan. Respondents seldom, if ever, have offered or sold the plan for any price higher than the so-called "special" or "reduced" price.

Subparagraph 1 of Paragraph Eleven of Count I to read:

1. That the 100-coupon plan, which has a base selling price of \$199.95 or \$189.95, is valued at over \$700.

ORDER AMENDING COMPLAINT

By motion filed Dec. 19, 1973, complaint counsel moved to amend the complaint. Upon consideration of respondents' answer and complaint counsel's reply, the administrative law judge disposed of all but two of the requested amendments, concluding that they were not reasonably within the scope of the original complaint. Pursuant to Rule 3.15(a) of the Commission's Rules of Practice, the law judge certified them to the Commission on Jan. 14, 1974. The amendments in question allege misrepresentations made by respondents' sales representatives as to the purpose of their initial contacts with prospective customers.

Upon consideration of the arguments in the pleadings, and the law judge's certification, the Commission has concluded that there is reason to believe that the misrepresentations alleged in the certified amendments were made and constitute violations of Section 5 of the Federal Trade Commission Act; that it is in the public interest to try said misrepresentations together with those alleged in the original complaint rather than separately and; that any possible prejudice to respondents can be avoided through the grant of additional time. Accordingly,

It is ordered, That complaint counsel's motion to amend, as certified to the Commission, be, and it hereby is, granted; and that the complaint be, and it hereby is, amended as follows:

Add as subparagraph 7 to Paragraph Nine of Count I:

7. That the purpose of respondents' initial contact with the prospect is to give a surprise which was sent out by respondents' Public Relations Department, or to present an advertising promotion or to make a courtesy presentation, or is for purposes other than the sale of respondents' products or services.

Add as subparagraph 7 to Paragraph Ten of Count I:

7. Respondents' sales representatives have not and are not contacting persons in their homes or places of business primarily for the purpose of giving a surprise, presenting an advertising promotion

or making a courtesy presentation. To the contrary, the primary purpose for contacting such persons has been and is to sell respondents' products or services.

It is further ordered, That the administrative law judge shall cause to be served upon respondents copies of the complaint, as amended herein, and by his order of Jan. 14, 1974.

ORDER SERVING RESPONDENTS WITH AMENDED COMPLAINT

By order of July 9, 1974, the Commission amended the complaint herein and directed that the administrative law judge cause to be served upon respondents copies of the complaint, as amended by the Commission on July 9, 1974, and as amended by the administrative law judge by order of Jan. 14, 1974. Accordingly,

It is ordered, That the complaint, as amended, be herewith served upon respondents, as per copy attached hereto.

It is further ordered, That respondents be, and they hereby are, given ten (10) days from the date of receipt of the amended complaint in which to file an answer thereto.

AMENDED 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 Atlantic Industries, Inc., a corporation trading as Atlantic Portrait Plan and Atlantic Film Club, International Baby Care, Inc., Atlantic International Distributors, Inc., a corporation trading as Amalgamated Credit and Collection Bureau, National Direct Corporation, a corporation trading as National Advertised Products and International Album Plan, Jeffrey J. Weiss and Martin Osman, individually and as officers of said corporations, Lawrence Hahn, individually and as an officer of Atlantic Industries, Inc., and Richard S. Labovitz, individually and as an officer of International Baby Care, Inc. and Atlantic International Distributors, Inc., 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1: Respondent Atlantic Industries, Inc., trading as Atlantic Portrait Plan, and Atlantic Film Club, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 720 N.W. 27th Ave., Miami, Fla.

Respondent is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of photographs, photograph albums, photograph enlargements, photograph certificates, film and other merchandise to the public.

Trading as Atlantic Portrait Plan, respondents' primary effort is to sell a photograph enlargement plan. Under the plan, the customer is entitled to have a specified number of enlargements developed by respondents over a ten year period. The customer pays a lump sum, often on credit, for the plan and receives a book of coupons which are redeemable for the enlargements. Said products are sold chiefly by door-to-door salesmen.

Respondent, trading as Atlantic Film Club, operates a film processing service.

PAR. 2. Respondent International Baby Care, 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 at 720 N.W. 27th Ave., Miami, Fla. Respondent International Baby Care, Inc. is a wholly-owned subsidiary of respondent Atlantic Industries, Inc.

Respondent is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of baby furniture products to the public.

PAR. 3. Respondent Atlantic International Distributors, Inc., trading as Amalgamated Credit and Collection Bureau, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The corporate address is 720 N.W. 27th Ave., Miami, Fla. Respondent Atlantic International Distributors, Inc. is a wholly-owned subsidiary of respondent Atlantic Industries, Inc.

Respondent Atlantic International Distributors, Inc. is now and for some time last past has been engaged in the collection of delinquent accounts for respondents Atlantic Industries, Inc. and International Baby Care, Inc.

PAR. 4. Respondent National Direct Corporation, trading as National Advertised Products and International Album Plan, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 720 N.W. 27th Ave., Miami, Fla. Respondent National Direct Distributors, Inc. is a wholly-owned subsidiary of respondent Atlantic Industries, Inc.

Respondent is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of photographs, photographic albums, photograph enlargements, photograph certificates, film and other merchandise to the public.

Trading as National Advertised Products, respondents' primary effort is to sell a photograph enlargement plan. Under the plan, the customer is entitled to have a specific number of enlargements developed by respondents. The customer pays a lump sum, often on credit, for the plan and receives a book of coupons which are redeemable for the enlargements. Said products are sold chiefly by door-to-door salesmen.

Trading as International Album Plan, respondents' primary effort is to sell a photograph enlargement plan. Under the plan, the customer is entitled to have a specific number of enlargements developed by respondents. The customer pays a lump sum, often on credit, for the plan and receives a book of coupons which are redeemable for the enlargements. Said products are sold chiefly by door-to-door salesmen.

PAR. 5. Respondents Jeffrey J. Weiss and Martin Osman are officers and directors of the four corporate respondents. Said individual respondents formulate, direct, and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of the individual respondents is 720 N.W. 27th Ave., Miami, Fla.

Respondent Lawrence Hahn is a director of the four corporate respondents and an officer of respondent Atlantic Industries, Inc. In such positions, the respondent cooperates with the other individual respondents in formulating, directing, or controlling the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of respondent Hahn is 2285 Peachtree Rd., N.W., Atlanta, Ga.

PAR. 6. Respondent Richard S. Labovitz is an officer of the corporate respondents International Baby Care, Inc., and Atlantic International Distributors, Inc. and as such cooperates with the other individual respondents in formulating, directing, and controlling the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The business address of respondent Labovitz is 720 N.W. 27th Ave., Miami, Fla.

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

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission

Act, the allegations of Paragraphs One, Four, Five and Seven hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 8. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused their said photographs, photograph albums, photograph enlargements, photograph certificates, film and other merchandise to be sold in various States of the United States, and when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in the various States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents, respondents' agents, representatives, and employees have made and are now making numerous statements and representations directly or by implication:

1. That customers will receive a free prize, gift, or bonus, namely a photograph album, with the purchase of the photograph enlargement plan.

2. That certain but not all prospective customers will be offered the opportunity to purchase the plan at a "special" or "reduced" price and that those prospective customers not offered the "special" or "reduced" price must pay a higher price.

3. That the "special" or "reduced" price is below respondents' established regular retail price for the plan.

4. That the "special" or "reduced" price is an "at cost" price which includes only the cost to respondents of materials needed to print and develop the enlargements.

5. That in order to purchase the plan at the "special" or "reduced" price, the prospective customer must agree to display the photograph album in his home.

6. That the special price is being offered for the purpose of advertising and promoting respondents' product.

7. That the purpose of respondents' initial contact with the prospect is to give a surprise which was sent out by respondents' public relations department, or to present an advertising promotion or to make a courtesy presentation, or is for purposes other than the sale of respondents' products or services.

PAR. 10. In truth and in fact:

1. The album is not free. Its cost is included in the cost of the plan.

2. Most, if not all, prospective customers are afforded the oppor-

tunity to purchase the plan at the "special" or "reduced" price and no customer has to pay any higher price.

3. The "special" or "reduced" price is not below respondents' established regular retail price of the plan. Respondents seldom, if ever, have offered or sold the plan for any price higher than the so-called "special" or "reduced" price.

4. The so-called "special" or "reduced" price is not an "at cost" price. The cost of the plan includes more than the cost to respondents of materials needed to print and develop the enlargements.

5. The prospective customers agreement to display the photograph album is not a prerequisite to respondents selling the plan to the customer at the so-called "special" or "reduced" price.

6. Respondents' offer is made for the purpose of realizing a profit on the sale and not for the purpose of advertising or promoting their portrait plan.

7. Respondents' sales representatives have not and are not contacting persons in their homes or places of business primarily for the purpose of giving a surprise, presenting an advertising promotion or making a courtesy presentation. To the contrary, the primary purpose for contacting such persons has been and is to sell respondents' products or services.

Therefore, the statements and representations set forth in Paragraph Nine are misleading and deceptive.

PAR. 11. In the further course and conduct of their business, respondents' agents, representatives, and employees represent directly or by implication that single enlargements are regularly sold by respondents for \$7 each. Using \$7 to demonstrate value, respondents further represent:

1. That the 100-coupon plan, which has a base selling price of \$199.95 or \$189.95, is valued at over \$700.

2. That the 90-coupon plan which has a base selling price of \$149.95 is valued at over \$630.

3. That the 60-coupon plan which has a base selling price of \$89.95 is valued at over \$420.

4. That customers will save the difference between the value of the plan and the base selling price.

PAR. 12. By and through the use of the statements set out in Paragraph Eleven above, and others of similar import and meaning but not expressly set out herein, respondents have represented, and are now representing that on a regular basis for a reasonably substantial period of time in the recent regular course of their business, single enlargements have been sold for \$7 and further that \$7 per

enlargement would be a fair and accurate amount to use in determining the value of respondents' plan.

PAR. 13. In truth and in fact respondents have not sold single enlargements for \$7 or any other price on a regular basis for a reasonably substantial period of time in the recent regular course of their business. Therefore, any demonstration of value or savings based on the \$7 amount such as those described in Paragraph Eleven above would be false and misleading.

In addition, when demonstrating savings to customers, respondents neglect to add to the base price of the plan an amount equal to seventy-five cents per enlargement which respondents charge to cover mailing and handling. Respondents failure to include this extra charge is deceptive and misleading because such failure results in an inflation of the amount a customer might save by purchasing the plan.

PAR. 14. In the course and conduct of respondents' operations of the film processing service and for the purpose of inducing the purchase of their developing and printing services, respondents, respondents' agents, representatives and employees have made, and are now making statements and representations to customers that customers will receive a fresh roll of Kodak film FREE with each roll of film developed or printed by respondents. The free film has been offered by respondents continuously for a period of at least two years.

PAR. 15. By and through the use of the word "free" respondents have represented directly or through implication that the price charged by respondents is for processing alone and does not include any payment for the film.

PAR. 16. In truth and in fact, the film is not free because the continuous offer of free film over a long period of time has resulted in the price for the processing service alone becoming the regular price for the processing *and* film in combination.

Thus, the statements and representations set out in Paragraphs Fourteen and Fifteen above are false and misleading.

PAR. 17. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

PAR. 18. The aforesaid acts and practices of respondents, as alleged herein, 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.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Four, Five, Six and Seven hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 19. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused their said photographs, photograph albums, photograph enlargements, photograph certificates, film, baby furniture, and other merchandise to be sold in various States of the United States, and when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in various States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 20. In the course and conduct of respondents' business, respondents' agents, representatives and employees have made, directly or by implication, statements and representations to customers that contracts entered into between respondents and said customers are non-cancellable. However, such statements are false, misleading and deceptive because in truth and in fact state statutes provide customers a right to cancel.

PAR. 21. 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.

PAR. 22. The aforesaid acts and practices of respondents, as alleged herein, 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.

COUNT III

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four, Five, Six and Seven hereof are incorporated by reference in Count III as if fully set forth verbatim.

