

Complaint

87 F.T.C.

IN THE MATTER OF

ALL SEASONS AIR CONDITIONING CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 9015. Complaint, Feb. 11, 1975—Decision, June 8, 1976*

Consent order requiring two affiliated North Miami, Fla., home improvement firms, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Further, respondents are required to cease failing to notify consumers of their right to a three-day cooling-off period and to cease initiating work on customers' homes prior to the end of said cooling-off period.

*Appearances*

For the Commission: *H. Marshall Korschun, Albert Posnick, and Edward J. Carnot.*

For the respondents: *Taylor, Brion, Baker & Breene, Miami, Fla.*

## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that All Seasons Air Conditioning Corp., Mastercraft Industries, Inc., corporations, and Murray Weintraub, Raymond Swier, and Saul Wolf, individually and as officers and/or managers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, 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. Corporate respondent All Seasons Air Conditioning Corp. 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 17140 N.W. 2nd Court, North Miami, Florida.

Corporate respondent Mastercraft Industries, Inc. 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 17162 N.W. 2nd Court, North Miami, Florida.

Respondent Murray Weintraub is the sales and advertising manager of corporate respondent All Seasons Air Conditioning Corp. and an

officer of corporate respondent Mastercraft Industries, Inc. Respondents Raymond Swier and Saul Wolf are officers of both corporate respondents. The three individual respondents formulate, direct and control the acts and practices of the corporate respondents, including those hereinafter set forth. Their address is 17140 N.W. 2nd Court, North Miami, Florida.

PAR. 2. Corporate respondent All Seasons Air Conditioning Corp. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of air conditioning systems at private residences.

Corporate respondent Mastercraft Industries, Inc. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of kitchen cabinets and equipment at private residences.

PAR. 3. In the ordinary course of their aforesaid business respondents regularly extend consumer credit and arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of business and in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, have caused and are causing customers to execute sales agreement contracts for the sale of respondents' goods and services. On these sales agreement contracts, respondents provide certain consumer credit information. Respondents do not furnish their customers prior to consummation of the transaction any separate statement containing all disclosures required in connection with a credit sale.

In most instances after the credit sale is consummated, respondents arrange for the extension of credit by local financial institutions whereby a loan, note, or other document is substituted for the sales agreement.

PAR. 5. By and through the use of the sale agreements, respondents:

1. Fail to print the term "finance charge," required by Section 226.8(c)(i) of Regulation Z and the term "annual percentage rate," required by Section 226.8(b)(2) of Regulation Z, more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

2. Fail to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, required by Section 226.8(b)(4), clearly, conspicuously,

in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

3. Fail to provide a description of the type of any security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b)(5) of Regulation Z.

4. Fail to use the term "cash price" as defined in Section 226.2(i) to describe the purchase price as required by Section 226.8(c)(1) of Regulation Z.

5. Fail to use the term "cash downpayment" to describe the downpayment in money in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

6. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

7. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

PAR. 6. By and through the use of respondents' sales agreements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of respondents' customers. The retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondents have in certain instances failed to give their credit customers the right to rescind until midnight of the third business day following the consummation of the transaction or the date of delivery of all disclosures, whichever is later, and have failed to set forth the "Effect of Rescission" in the rescission notice to their customers, as required by Sections 226.9(a) and (b).

Further, respondents have made physical changes in customers' property, and performed work or services on such property before expiration of the three-day rescission period. Respondents' failure to refrain from commencing work pursuant to rescindable contracts before the rescission period has expired is in violation of Section 226.9(c) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' failures to comply with the provisions of Regulation Z as alleged in Paragraphs Five and Six herein constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges the respondents named in the caption hereto with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission of the proposed findings of fact and conclusions of law submitted simultaneously with the agreement by the Commission's staff, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following findings of facts and conclusions of law, as admitted by respondents in the aforesaid consent agreement, and enters the following order:

1. Corporate respondent All Seasons Air Conditioning Corp. 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 17140 N.W. Second Court, North Miami, Florida.

2. Corporate respondent Mastercraft Industries, Inc. 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 17162 N.W. Second Court, North Miami, Florida.

3. Respondents Murray Weintraub, Raymond Swier and Saul Wolf are officers of both corporate respondents All Seasons Air Conditioning Corp. and Mastercraft Industries, Inc. The three individual respondents formulate, direct and control the acts and practices of the corporate respondents, including those hereinafter set forth. Their address is 17140 N.W. Second Court, North Miami, Florida.

4. Corporate respondent All Seasons Air Conditioning Corp. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of air conditioning systems at private residences.

5. Corporate respondent Mastercraft Industries, Inc. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of kitchen cabinets and equipment at private residences.

6. In the ordinary course of their aforesaid business respondents regularly extend and have extended consumer credit and arrange and have arranged for the extension of consumer credit, as "consumer

credit” and “arrange for the extension of credit” are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

7. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of business and in connection with their credit sales, as “credit sale” is defined in the aforesaid Regulation Z, have caused customers to execute sales agreement contracts for the sale of respondents’ goods and services. On these sales agreement contracts, respondents provided certain consumer credit information. Respondents did not furnish their customers prior to consummation of the transaction any separate statement containing all disclosures required in connection with a credit sale. In most instances after the credit sale was consummated, respondents arranged for the extension of credit by local financial institutions whereby a loan, note, or other document was substituted for the sales agreement.

8. By and through the use of the sales agreements, respondents:

a. have failed to print the term “finance charge,” required by Section 226.8(c)(8)(i) of Regulation Z and the term “annual percentage rate,” required by Section 226.8(b)(2) of Regulation Z, more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z;

b. have failed to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, required by Section 226.8(b)(4), clearly, conspicuously, in meaningful sequence, as required by Section 226.6 (a) of Regulation Z;

c. have failed to provide a description of the type of any security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b) (5) of Regulation Z;

d. have failed to use the term “cash price” as defined in Section 226.2(i) to describe the purchase price as required by Section 226.8(c)(1) of Regulation Z;

e. have failed to use the term “cash downpayment” to describe the downpayment in money in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

f. have failed to use the term “unpaid balance of cash price” to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z; and

g. have failed to use the term “amount financed” to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

9. By and through the use of respondents' sales agreements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of respondents' customers. The retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

10. Respondents have in certain instances failed to give their credit customers the right to rescind until midnight of the third business day following the consummation of the transaction or the date of delivery of all disclosures, whichever is later, and have failed to set forth the "Effect of Rescission" in a rescission notice to their customers, as required by Sections 226.9(a) and (b).

11. Respondents have made physical changes in customers' property, and performed work or services on such property before expiration of the three-day rescission period. Respondents' failure to refrain from commencing work pursuant to rescindable contracts before the rescission period has expired is in violation of Section 226.9(c) of Regulation Z.

12. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

#### ORDER

*It is ordered,* That respondents All Seasons Air Conditioning Corp., and Mastercraft Industries, Inc., corporations, their successors and assigns and their officers, and Murray Weintraub, Raymond Swier, and Saul Wolf, individually, and as officers and/or managers of said corporations, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or any other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. § 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to print the term "finance charge," required by Section 226.8(c)(8)(i) of Regulation Z and the term "annual percentage rate," required by Section 226.8(b)(2) of Regulation Z, more conspicuously

than other terminology, as required by Section 226.6(a) of Regulation Z.

2. Failing to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, required by Section 226.8(b)(4), clearly, conspicuously, in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

3. Failing to provide a description of the type of each security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b)(5) of Regulation Z, and with respect to a description of a security interest which is provided, failing to provide the description clearly and conspicuously as required by Section 226.6(a) of Regulation Z.

4. Failing to use the term "cash price" as defined in Section 226.2(i) to describe the purchase price as required by Section 226.8(c)(1) of Regulation Z.

5. Failing to use the term "cash downpayment" to describe the downpayment in money in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

6. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

7. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

8. Failing, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

9. Making any physical changes in a customer's property or performing any work or services on such property before expiration of the three-day rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or is expected to be used as the principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

10. Failing in any credit transaction to preserve evidence of compliance for a period of not less than two years as required by Section 226.6(i) of Regulation Z.

11. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and

226.5 of Regulation Z, in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

*It is further ordered,* That respondents promptly refund to any credit customer who did not receive from respondents, contemporaneously with a sales agreement for respondents' goods and services, a notice of right of rescission as required by Section 226.9 (b) of Regulation Z, any monies received from that customer, directly or indirectly, pursuant to a liquidated damages provision within respondents' sales agreements.

*It is further ordered,* That respondents promptly refund to any credit customer who did not receive from respondents, contemporaneously with a sales agreement for respondents' goods and services, a notice of right of rescission as required by Section 226.9(b) of Regulation Z, any monies retained as a penalty under the Florida Home Solicitation Sales Act.

*It is further ordered,* That respondents promptly refund to any credit customer who did not receive from respondents, contemporaneously with a sales agreement for goods and services, a notice of right of rescission as required by Section 226.9(b) of Regulation Z, and who did not have any physical changes made on his property by respondents, any monies received, directly or indirectly, from that customer.

*It is further ordered,* That respondents discharge any acquired lien on any real property that has arisen by operation of law in connection with any credit transaction in which any credit customer did not receive, contemporaneously with a sales agreement for respondents' goods and services, a notice of right of rescission as required by Section 226.9(b) of Regulation Z. Respondents shall by certified mail, return receipt requested, notify any credit customer who has a lien affected by this provision that (1) the lien has been discharged; (2) the customer has no further legal obligation resulting from the lien; and (3) the reason for the discharge of the lien is that respondents failed to comply with Section 226.9(b) of Regulation Z.

*It is further ordered,* That the respondents compile and provide to the Commission a list of the last known name, address, telephone number and date of transaction of all credit customers who have entered into a sales agreement with either of the corporate respondents since July 1, 1969.

*It is further ordered,* That respondents provide to the Commission a copy of any notice of right to rescission as required by Section 226.9(b) of Regulation Z, which has been provided to any credit customer by either of the corporate respondents.

*It is further ordered,* That respondents retain until at least one year after the initial compliance report has been filed with the Commission

all documents concerning credit transactions entered into with credit customers by either of corporate respondents since July 1, 1969.

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

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

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

1389

Complaint

IN THE MATTER OF

HERBERT R. GIBSON, SR. T/A GIBSON PRODUCTS  
COMPANY, ETC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE CLAYTON  
ACT*Docket 9016. Complaint, Feb. 25, 1975—Decision, June 17, 1976*

Consent order requiring Progressive Brokerage, Inc., and Barshell, Inc., two Dallas, Tex., brokerage firms and respondents in this case, among other things to cease collecting brokerage fees, commissions, or other compensations from sellers while acting for, or in behalf of, buyers.

*Appearances*

For the Commission: *André Trawick, Jr., Paul W. Turley, and Richard H. Gateley.*

For the respondents: *Bardwell D. Odum, Shannon Jones, Jr., Passman, Jones, Andrews, Coplín, Holley & Co., Robert E. Rader, Jr., John M. Gillis, Gillis, Rogers & Taylor, all of Dallas, Tex. and Akin, Gump, Strauss, Hauer & Feld, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. § 45) and Section 2(c) of the Clayton Act, as amended (15 U.S.C. § 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

## I. RESPONDENTS

PARAGRAPH 1. Respondent Herbert R. Gibson, Sr., is an individual doing business under his own name and the registered trade names of Herbert R. Gibson, Sr., d/b/a Gibson Products Company, and Herbert R. Gibson, Sr., d/b/a The Gibson Trade Show, both unincorporated sole proprietorships. His principal place of business is 1228 East Ledbetter Dr., Dallas, Texas. His residence address is 1358 Bar Harbor Dr., Dallas, Texas.

PAR. 2. Respondents Herbert R. Gibson, Jr., Gerald P. Gibson, and Belva Gibson are individuals doing business under their own names or the registered trade names of Herbert R. Gibson, Sr., d/b/a Gibson Products Company and/or Herbert R. Gibson, Sr., d/b/a The Gibson

Trade Show, or employed by, representing or in some manner associated with either Herbert R. Gibson, Sr., individually or Herbert R. Gibson, Sr., d/b/a Gibson Products Company, or Herbert R. Gibson, Sr., d/b/a The Gibson Trade Show. Said respondents are now and have been participating in, or aiding and abetting in the participation of, the acts and practices hereinafter set forth. Their principal place of business is 519 Gibson St., Seagoville, Texas. Belva Gibson's residence address is 1358 Bar Harbor Dr., Dallas, Texas. Herbert R. Gibson, Jr.'s residence address is 10412 Shiloh Road, Dallas, Texas. Gerald P. Gibson's residence address is 6814 Alexander Dr., Dallas, Texas. Respondents Herbert R. Gibson, Sr., Herbert R. Gibson, Sr. d/b/a Gibson Products Company, Herbert R. Gibson, Sr. d/b/a The Gibson Trade Show, Herbert R. Gibson, Jr., Gerald Gibson, and Belva Gibson may sometimes be referred to hereinafter, collectively, as the "Gibson family respondents."

PAR. 3. (a) Respondents Gibson's, Inc., and Gibson's Discount Center, Inc., Ideal Travel Agency, Inc., and Gibson Warehouse, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Texas, with their principal place of business located at 519 Gibson St., Seagoville, Texas.

(b) Respondent Gibson Products Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 1228 East Ledbetter Dr., Dallas, Texas. Respondents Gibson's, Inc., Gibson's Discount Centers, Inc., Ideal Travel Agency, Inc., Gibson Warehouse, Inc., Gibson Products Co., Inc., may sometimes be referred to hereinafter as the "Gibson corporate respondents."

PAR. 4. (a) Respondent Progressive Brokerage, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office located at 14802 Inwood Road, Dallas, Texas.

(b) Respondent Barshell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office located at 14802 Inwood Road, Dallas, Texas.

(c) Respondent Al Cohen & Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office located at 12514 Gulf Freeway, Houston, Texas.

## II. BUSINESS

PAR. 5. Respondents Herbert R. Gibson, Sr., Herbert R. Gibson, Sr., d/b/a Gibson Products Company and respondents Herbert R. Gibson,

Jr., Gerald P. Gibson, and Belva Gibson, individually or as agents or associates of Herbert R. Gibson, Sr., are now and for many years have been engaged in the operation and control of a number of retail stores (hereinafter sometimes referred to as "Gibson family-owned stores"), reselling sundry types of products, including but not limited to soft goods, beauty aids, health supplies, automotive supplies, housewares, toys and hardware to the consuming public. Said products are purchased from a number of manufacturers, suppliers and handlers of such products.

PAR. 6. Respondent Herbert R. Gibson, Sr., Herbert R. Gibson, Sr., d/b/a Gibson Products Company and Herbert R. Gibson, Sr., d/b/a The Gibson Trade Show, together with or acting through respondent Gibson Products Co., Inc., sell or grant license or franchise agreements to retail stores which permit individuals or corporations in several States to use the trademarks, service marks and trade names of "Gibson's," "Gibson" (with design), "Gibson Products Company" and "Gibson Discount Center" (which stores may be referred to hereinafter as "Gibson franchised stores") and conduct trade shows for and/or attended by Gibson stores. There are presently in excess of 536 such retail stores in the States of Texas, Oklahoma, Kansas, Colorado and Arkansas among others. Sales of products by said retail stores, including the sales by the Gibson family-owned stores, are substantial and are believed to exceed \$1,500,000,000 (One billion, five hundred million dollars) annually.

PAR. 7. (a) Respondents Gibson's, Inc. and Gibson's Discount Center, Inc., are now and for many years have been engaged in the business of controlling and operating Gibson family-owned stores, warehousing and selling to the consuming public sundry products in addition to selling or granting licenses or franchises to retail stores as described in Paragraph 6 herein. Said respondents have also served as instrumentalities for conducting other aspects of the Gibson family business including the various practices described herein.

(b) Respondent Ideal Travel Agency, Inc., is now and for many years has been engaged in the business of arranging transportation and accommodations for suppliers selling to some or all Gibson franchised stores and Gibson family-owned stores and has acted as a depository for the payments of induced promotional allowances.

(c) Respondent Gibson Warehouse, Inc. is now and for many years has been engaged in the business of receiving sundry products from some suppliers for resale and/or distribution to some or all Gibson franchised stores and Gibson family-owned stores.

(d) Respondent Gibson Products Company, Inc. is now and for many years has been engaged in the business of selling to the consuming

public sundry products and, in addition, conducting and/or serving as an instrumentality for conducting various other aspects of the Gibson family business and various practices as described herein.

PAR. 8. Respondents Progressive Brokerage, Inc., Barshell, Inc., and Al Cohen and Associates, Inc. are now and for many years have been engaged primarily in the business of affecting sales of sundry products for sellers located in various States of the United States and purchases by buyers located in the State of Texas. In such capacity, said respondents have demanded and received commission, brokerage and other compensation in connection with affecting purchases and sales of sundry products described herein.

### III. COMMERCE

PAR. 9. In the course and conduct of their business, the Gibson family respondents and the Gibson corporate respondents have engaged and are now engaged in commerce or their acts and practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in the following manner:

(a) They solicit, handle, arrange for the purchase and sale of products to retail stores from a large number of suppliers located throughout the United States and respondents cause these products when solicited, handled, arranged for or purchased by them to be transported from the place of manufacture to retail stores in several States for resale to the consuming public. There is now, and for many years has been, a constant current of trade in commerce in these products between and among various States of the United States.

(b) They have induced or induced and received payment or consideration from suppliers in various States of the United States for promotional services or facilities. There is now, and for many years has been, a constant current of trade in commerce in these promotional services or facilities between and among the various States of the United States.

(c) In the course and conduct of their business for the past several years, they have purchased, distributed and resold, and are now purchasing, distributing and reselling sundry products in commerce or affecting commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act, as amended, which they purchased from sellers located in various States of the United States other than the States in which said respondents are located. Said respondents have transported or caused such products to be transported from the sellers' places of business in various States of the United States to the buyers' places of business located in other States.

PAR. 10. Respondents Progressive Brokerage, Inc., Barshell, Inc., and

Al Cohen and Associates, Inc., in the course and conduct of their business as manufacturers representatives or brokers have been and are now affecting sales of sundry products including but not limited to soft goods, beauty aids, health supplies, automotive supplies, housewares, toys and hardware by sellers located in various States of the United States other than the State of Texas, and purchases by buyers located in the State of Texas, in or affecting commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act, as amended. Said respondents have transported or caused such products to be transported from the sellers' places of business in various States of the United States to the buyers' places of business located in other States.

#### IV. COMPETITION

PAR. 11. In the course and conduct of their business in or affecting commerce, except to the extent limited or restrained by the practices identified hereinafter, respondents, individually or in concert, are now and have been in competition with other corporations, persons, firms and partnerships in the soliciting, handling, arranging for or purchasing for resale or sale and distribution of sundry products including but not limited to soft goods, beauty aids, health supplies, automotive supplies, housewares, toys and hardware.

#### V. COUNT I — INDUCING DISCRIMINATORY ALLOWANCES

PAR. 12. The allegations of Paragraphs 1-3, 5-7, 9 and 11 are incorporated herein by reference.

PAR. 13. In the course and conduct of business in or affecting commerce, and particularly since 1959, the Gibson family respondents and the Gibson corporate respondents, acting individually or in concert, have knowingly induced and received, or received, from suppliers payment of something of value to or for said respondents' benefit as compensation or in consideration for services or facilities furnished by or through said respondents in connection with said respondents offering for sale, selling, soliciting, handling or arranging for sale of products to Gibson family-owned stores and to Gibson franchised stores or resale thereof.

PAR. 14. (a) For example, during February, May, August and November of each year, said respondents conduct, hold or direct or assist in conducting, holding or directing a trade show (hereinafter sometimes called the "Gibson Trade Show") at which products of suppliers are displayed. The Gibson Trade Shows are attended by employees, agents and associates of said respondents; franchisees and

licensees of respondents Herbert R. Gibson, Sr., and Herbert R. Gibson, Sr., d/b/a Gibson Products Company and their employees, agents and associates.

(b) In the course of the Gibson Trade Shows held during February, May, August and November of each year for 1969, 1970, 1971 and 1972, said respondents solicited and induced from most, if not all, suppliers one or more of the following payments or considerations:

(1) Payment for booth rental.

(2) Payment for services in connection with booth rental including but not limited to electrical contractor services and furnishings.

(3) Payment for advertising in a booklet or tabloid which was circulated among persons attending the Gibson Trade Show.

(4) Special trade show prices on one or more of the suppliers' products offered for sale at the Gibson Trade Show.

(5) Provision of personnel to prepare and attend the booth throughout the time the Gibson Trade Show was open.

(6) Special billing terms on all sales made at the Gibson Trade Show.

(7) Special allowances on all sales made at the Gibson Trade Show, calculated from a predetermined percentage of all such sales.

(c) Said respondents received from participating suppliers substantial sums each year for the 1969, 1970, 1971 and 1972 Gibson Trade Shows.

PAR. 15. In the course and conduct of business in or affecting commerce, and particularly since 1959, the Gibson family respondents and the Gibson corporate respondents, acting individually or in concert, have knowingly induced and received, or received, from suppliers the furnishing of services or facilities in connection with the selling, offering for sale, soliciting, handling or arranging for the sale of products sold to Gibson family-owned stores and Gibson franchised stores or resale thereof.

PAR. 16. For example, during the Gibson Trade Shows, agents, employees or representatives of suppliers performed valuable services such as staffing the booths rented by suppliers from respondents and demonstrating the suppliers' products therein. In addition to the furnishing of such services, other services were performed by suppliers which aided said respondents in the resale of suppliers' products.

PAR. 17. Typical of the suppliers who participated in the Gibson Trade Show at least once during the years of 1969, 1970, 1971 or 1972, and granted one or more of the special payments or considerations described above are:

Doranne of California, Inc.  
Los Angeles, California

Ceramic Wares

1389

## Complaint

Armstrong Environmental Industries Los Angeles, California	Water Sprinklers
Revel, Inc. Venice, California	Toys (model kits)
L. M. Becker & Company Appleton, Wisconsin	Housewares
Beagle Manufacturing Company El Monte, California	Housewares
Bomar Manufacturing Co., Inc. Dallas, Texas	Jewelry
Ben-Mont Corporation Bennington, Vermont	Gift Wrapping Paper

PAR. 18. Many suppliers participating in the Gibson Trade Show for the years 1969, 1970, 1971 or 1972 did not offer or otherwise make available to all their customers competing with respondents in the sale and distribution of their respective products payments, allowances, services, facilities or other things of value on terms proportionally equal to those granted respondents.

PAR. 19. When the Gibson family respondents and the Gibson corporate respondents induced and received or received, payments, allowances, services, facilities or other things of value from suppliers, said respondents knew or should have known that they were inducing and receiving, or receiving, payments, allowances, services, facilities or other things of value from suppliers which said suppliers were not offering or otherwise making available on proportionally equal terms to all other customers of such suppliers who were competing with respondents.

PAR. 20. The acts and practices of respondents, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. § 45).

## VI. COUNT II — BOYCOTTING

PAR. 21. The allegations of Paragraphs 1-3, 5-7, 9 and 11 are incorporated herein by reference.

PAR. 22. The Gibson family respondents and the Gibson corporate respondents, in combination, agreement, understanding and conspiracy with all or some of the Gibson family-owned stores and Gibson franchised stores, have established, maintained and pursued a course of conduct eliminating or boycotting suppliers which did not grant all or some of the special allowances on sales during or incident to the Gibson Trade Show as described in Count I herein.

PAR. 23. Said respondents are now engaged and for many years have been engaged in the following unfair acts and practices, among others, in furtherance of the boycott:

(a) Dissemination of bulletins advising the Gibson family-owned stores and Gibson franchised stores not to purchase from designated suppliers.

(b) Communicating, directly or indirectly, to the Gibson family-owned stores and Gibson franchised stores not to purchase from designated suppliers.

PAR. 24. Such acts and practices, as herein alleged, of said respondents are all to the prejudice of the public and constitute unfair methods of competition and unfair acts and practices in or affecting commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. § 45).

#### VII. COUNT III — ILLEGAL BROKERAGE

PAR. 25. The allegations of Paragraphs 1-11 are incorporated herein by reference.

PAR. 26. (a) In the course and conduct of their business, the Gibson family respondents and the Gibson corporate respondents have been or are now utilizing the services of various manufacturers representatives and brokers such as respondents Progressive Brokerage, Inc., Barshell, Inc., and Al Cohen and Associates, Inc., to perform services for the Gibson family respondents and the Gibson corporate respondents by:

- (1) Furnishing information concerning market conditions;
- (2) Maintaining contact with various sellers;
- (3) Inspecting and selecting specified qualities and quantities of sundry products; and
- (4) Negotiating purchases of said products.

(b) Such manufacturers representatives and brokers, in performing the services enumerated above, have been or are now acting as agents or representatives of the Gibson family respondents and the Gibson corporate respondents. In such capacity, said manufacturers representatives and brokers, were or are subject to and under the direct or indirect control of the Gibson family respondents and the Gibson corporate respondents.

(c) In connection with such transactions, such manufacturers representatives and brokers, including respondents Progressive Brokerage, Inc., Barshell, Inc., and Al Cohen and Associates, Inc., are now or have been collecting and receiving brokerage, commissions, or other compensations from sellers of sundry products, when in fact they have been or are now acting for or in behalf of the Gibson family respondents or Gibson corporate respondents or are subject to the direct or indirect control of said respondents.

PAR. 27. The aforesaid acts and practices of said respondents, individually or in conjunction with each other, in receiving or accepting, or paying and granting, directly or indirectly, anything of value as commission, brokerage or other compensation, or any allowance or discount in lieu thereof from sellers, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. § 13) and are all to the prejudice of the public and constitute unfair methods of competition in commerce and unfair acts and practices in or affecting commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. § 45).

DECISION AND ORDER AS TO RESPONDENTS PROGRESSIVE  
BROKERAGE, INC. AND BARSHELL, INC.

The Commission having issued its complaint on February 25, 1975, charging the respondents named in the caption hereof with violations of the Federal Trade Commission Act and the Clayton Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission under Section 3.25 of the Commission's Rules of Practice that, in the circumstances presented, there was a likelihood of settlement and that the public interest would be served by withdrawing the matter as to respondents Progressive Brokerage, Inc. and Barshell, Inc., from adjudication; and

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

The Commission having thereafter considered the aforesaid agreement and having determined that it provides an adequate basis for

appropriate disposition in part of this proceeding, and having accepted said agreement, and the agreement containing consent order having been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding as to respondents Progressive Brokerage, Inc. and Barshell, Inc.:

1. Respondent Progressive Brokerage, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office located at 14802 Inwood Road, Dallas, Texas.

Respondent Barshell, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office located at 14802 Inwood Road, Dallas, Texas.

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

#### ORDER

*It is ordered*, That respondents Progressive Brokerage, Inc., and Barshell, Inc., corporations (hereinafter referred to as respondents), their representatives, agents or employees, directly or through any corporate or other device, in connection with the sale of goods, wares or merchandise for any seller principal, in commerce, as "commerce" is defined in the Clayton Act, as amended, and in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist, except as otherwise permitted by law, from:

1. Paying, granting or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, any allowance or discount in lieu of brokerage, or any part or percentage thereof, by selling any goods, wares or merchandise to such buyer at prices reflecting a reduction from the prices at which sales of such products are currently being effected by respondents for any seller principal where such reduction in price is accompanied by a reduction in the regular rate of commission, brokerage or other compensation currently being paid to respondents by such seller principal for brokerage services; or

2. In any other manner, paying, granting or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage or other compensation or any

allowance or discount in lieu thereof upon, or in connection with, any sale of goods, wares or merchandise to such buyer for its own account.

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

*It is further ordered,* That respondents Progressive Brokerage, Inc. and Barshell, Inc., 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.

Order

87 F.T.C.

IN THE MATTER OF  
RSR CORPORATION

*Docket 8959. Order, June 22, 1976*

Denial of complaint counsel's motion to deem respondent's failure to file timely notice of intention to appeal as waiver of its right to appeal.

*Appearances*

For the Commission: *K. Keith Thurman, James C. Egan, Jr. and Annthalia Lingos.*

For the respondent: *Wald, Harkrader & Ross, Washington, D.C.*

ORDER DENYING COMPLAINT COUNSEL'S MOTION TO DEEM  
RESPONDENT'S FAILURE TO FILE A TIMELY NOTICE OF INTENTION  
TO APPEAL AS A WAIVER OF ITS RIGHT TO APPEAL

Complaint counsel have moved for a determination by the Commission that respondent's failure to file a timely notice of intention to appeal from the initial decision, pursuant to Rule 3.52(a), or for an extension of time in which to file a notice, constitutes a waiver of its right to appeal. Respondent asserts that it decided not to appeal from the administrative law judge's determination of liability based on its belief that complaint counsel did not intend to appeal from the law judge's partial divestiture order. Once respondent was served with complaint counsel's notice, and after the filing deadline had passed, it filed its notice of intention to appeal.

Whether or not an adversary intends to challenge an order may well be relevant to a party's decision whether to appeal.\* In the present case, respondent should have either filed a "protective" notice or attempted to determine from complaint counsel personally whether they intended to appeal. However, in view of respondent's apparent good faith belief that complaint counsel would not appeal and the fact that the untimeliness of respondent's filing has not delayed the briefing or the argument of the instant appeals, the Commission has determined to deny complaint counsel's motion.

*It is so ordered.*

\* See 9 J. Moore, *Federal Practice*, ¶204.11[1] at 927-28 (2d ed. 1975).

IN THE MATTER OF  
WALTER KIDDE & COMPANY, INC.

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

*Docket 8957. Complaint, Mar. 20, 1974—Decision, June 29, 1976*

Consent order requiring a Clifton, N.J., multimarket manufacturer, among other things to divest itself, within two years, of two of its door lockset product lines obtained through the acquisition of Arrow Lock Corporation. Further, the order requires respondent to license two other product lines and imposes a ten-year ban on acquisitions by respondent in the lockset manufacturing industry without prior F.T.C. approval.

*Appearances*

For the Commission: *Alfred J. Ferrogari, Harold Brandt, and Sandra Grayson.*

For the respondent: *S. Litvack and K. Newman, Donovan, Leisure, Newton & Irvine, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Walter Kidde & Company, Inc., a corporation, has violated Section 7 of the Clayton Act, as amended (15 U.S.C. § 18) and that a proceeding in respect thereof would be in the public interest issues its complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. § 22) stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint, the following definitions shall apply:

a. Door locksets are:

- (1) mortise locks and latches (A.N.S.I. series 1000)
- (2) preassembled type locks and latches (A.N.S.I. series 2000)
- (3) integral locks and latches (A.N.S.I. series 3000)
- (4) bored locks and latches (A.N.S.I. series 4000)
- (5) all other mortise, preassembled, integral and bored door locks and latches with functions not included in A.N.S.I. series 1000, 2000, 3000 or 4000 including any such proprietary door locks and latches
- (6) all entrance handle locks with thumb piece with bored type lock mechanism
- (7) series 3 — mortise locks and latch sets; series 8 — cylinder French door locks and locksets; series 121 — cylinder entrance door locks and

locksets; and series 123 — cylinder entrance door locks and locksets all of which are set forth in Federal Specification FF-H-OO-106(b)

(8) bored and mortise dead locks and latches.

b. A.N.S.I. Standard A 156.2 - 1972 refers to American National Standards Institute standard for locks and lock trim; B.H.M.A. Standard 601 refers to Builders Hardware Manufacturers Association standard for locks and lock trim and Federal Specification FF-H-OO-106(b) refers to specifications for builders hardware; locks and door trim promulgated for Federal government uses.

## II. RESPONDENT

PAR. 2. Walter Kidde & Company, Inc. (hereinafter Kidde) is a Delaware corporation with its principal office and place of business located at 9 Brighton Road, Clifton, New Jersey.

PAR. 3. Kidde is a multimarket manufacturing and service corporation manufacturing and selling such products as safety, security and protection equipment and devices and a wide variety of consumer, commercial and industrial products. For the year ending 1972, it had sales of \$832.4 million, net profit of \$32.4 million and total assets of \$661.8 million. On the basis of Kidde's 1972 financial statements, the May 15, 1973 *Fortune Directory* listed Kidde as the 169th largest industrial corporation in the United States based on total sales.

PAR. 4. At all times relevant herein, Kidde sold and shipped, and is now selling and shipping, products in interstate commerce throughout the United States. Hence Kidde was at the time of the acquisition challenged herein, and is now, engaged in commerce as "commerce" is defined in the Clayton Act.

## III. ARROW LOCK CORPORATION

PAR. 5. Prior to October 4, 1971 Arrow Lock Corporation (hereinafter Arrow) was a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 4900 Glenwood Ave., Brooklyn, New York.

PAR. 6. At the time of its acquisition, Arrow was an important manufacturer and seller of door locksets, as defined herein, door lock assemblies and other hardware.

PAR. 7. For the calendar year ending 1970, Arrow had total sales of \$4,750,000 and total assets of more than \$2 million.

PAR. 8. At all times relevant herein Arrow sold and shipped products in interstate commerce and was engaged in "commerce" within the meaning of the Clayton Act.

1401

Decision and Order

## IV. ACQUISITION

PAR. 9. Pursuant to an agreement of merger and plan of reorganization dated August 2, 1971, Kidde on October 4, 1971 acquired substantially all of the property, assets and business of Arrow in exchange for 122,928 shares of the company's common stock.

## V. TRADE AND COMMERCE

PAR. 10. Builders hardware represents a portion of all building construction costs with door locksets, as defined herein, a major item of builders hardware.

PAR. 11. In 1970, the four largest manufacturers of door locksets, as defined herein, accounted for 72 percent of the industry's total sales.

PAR. 12. In 1970, Kidde accounted for 6.3 percent of the domestic sales of door locksets while Arrow accounted for 2.9 percent. In that year, of the approximately 19 door lockset manufacturers in the United States, Kidde ranked 5th and Arrow ranked 8th. In 1972, Kidde was the 4th largest door lockset manufacturer in the United States.

PAR. 13. The door lockset market has become increasingly concentrated. In 1969, the top four firms accounted for 72 percent of the market and by 1972, their share had increased to 75 percent.

## VI. THE EFFECTS OF THE ACQUISITION

PAR. 14. The effect of the acquisition by Kidde of Arrow may be substantially to lessen competition, or to tend to create a monopoly throughout the United States by eliminating actual competition between Kidde and Arrow in the manufacture and sale of door locksets as defined herein.

## VII. VIOLATION CHARGED

PAR. 15. The acquisition of Arrow by Kidde on October 4, 1971 constitutes a violation of Section 7 of the Clayton Act as amended (15 U.S.C. § 18).

## DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and the respondent having been served with a copy of the complaint; and

The Commission having withdrawn the matter from adjudication for

the purpose of considering settlement by the entry of a consent 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, 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 set forth 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Walter Kidde and Company, 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 9 Brighton Road, Clifton, New Jersey.

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

ORDER

I

*It is ordered*, That as used herein:

A. The term "Kidde" means respondent Walter Kidde & Co., Inc., a corporation organized and existing under the laws of the State of Delaware with principal offices at 9 Brighton Road, Clifton, New Jersey, all predecessors thereof and successors thereto.

B. The term "Arrow" means the Arrow Lock Corporation, a wholly-owned subsidiary of Kidde, with offices at 4900 Glenwood Ave., Brooklyn, New York.

C. The term "Sargent" means Sargent & Company, a division of Kidde, with offices at 100 Sargent Dr., New Haven, Connecticut.

D. The term "door locksets" means those products described in Paragraph 1a(1) through (8) of the complaint herein.

E. (1) "5 Line" means the door lockset product line heretofore sold by Sargent under the trade name "5 Line."

(2) "Arrow mortise lockset" means the mortise door lockset product line heretofore sold by Arrow.

(3) "Integralock" means the door lockset product line sold by Sargent under the registered trademark "Integralock."

(4) "Keso product line" means the security cylinders and keys sold by Sargent under the registered trademark "Keso."

## II

*It is ordered,* That, subject to the prior approval of the Federal Trade Commission, respondent Kidde, a corporation, through its officers, directors, agents, representatives, employees, successors and assigns, shall as soon as possible and in any event no later than two (2) years from the date this order becomes final, divest itself of the 5-Line and the Arrow mortise lockset by divesting absolutely and in good faith all right, title and interest to and in all equipment, tools, parts, tooling, blueprints, drawings, assembly plans and instructions which are itemized or described in Schedule "A"\* hereto and are referred to hereinafter as "the divested property." Said divestiture shall be made to an acquirer able to use the divested property in the manufacture and sale of door locksets in the United States. In addition, Kidde, shall offer for sale to any such acquirer of the divested property such inventories of the 5-Line and the Arrow mortise lockset as may be negotiated by and between the parties to any transaction entered into pursuant hereto. *Provided, however,* that nothing contained herein shall be deemed or construed to limit in any way the right of Kidde, Sargent or Arrow to engage in the manufacture, assembly, distribution and/or sale of any product, subject only to the provisions of Section V hereof regarding prohibitions on future acquisitions.

## III

*It is further ordered,* That, upon the written request of the acquirer of the divested property, Kidde shall furnish such technological information and make available for a reasonable period of time such personnel and technical assistance as may be reasonably necessary to enable such acquirer to relocate and use the divested property in the production of door locksets. For each such person furnished Kidde may charge an amount not to exceed the reasonable traveling and living expenses and the actual cost to Kidde for the time involved.

## IV

*It is further ordered,* That, pending divestiture, Kidde shall not, except in the ordinary course of business, make any changes, or permit

\* Because of the substantial cost of printing Schedule "A" of the order, only two copies were made and are available for review at the Office of the Secretary if necessary.

any deterioration in the divested property so as to frustrate or impair the requirements of this order.

## V

*It is further ordered,* That Kidde shall cease and desist for a period of ten (10) years beginning on the date this order becomes final from acquiring, or acquiring and holding, directly or indirectly, without prior approval of the Federal Trade Commission, any part of the assets, stock, share capital, or other actual or potential equity or right of participation in the earnings of any concern, corporate or noncorporate, which is engaged in the manufacture and sale of door locksets in the United States, or from entering into any agreement or understanding with such a concern whereby Kidde acquires control over the business activities thereof; *provided, however,* That the provisions of this Section V shall not apply to any acquisition or holding of, or other transaction whereby Kidde acquires or holds control over, a concern (or part thereof) which is not engaged in the manufacture and sale of door locksets in the United States.

## VI

*It is further ordered,* that:

A. For a period of five (5) years following the effective date of this order, insofar as it now has or may acquire the power to do so, Kidde shall grant, on a reasonable royalty basis, to any person making written request therefor: (a) a nonexclusive right to use such know-how, trademarks, goodwill and other rights as Kidde may have in connection with the manufacture and sale within the United States of the Integralock; and/or (b) a nonexclusive sublicense to manufacture, have manufactured, use and sell in the United States, the Keso product line, as well as any other of Kidde's rights in and to the Keso product line which it now has or may acquire and which it may legally be entitled to license or sublicense.

B. For purposes of this Section VI, a reasonable royalty is defined as a rate (a) in the case of the Integralock, not to exceed two percent (2%) of sales; and (b) in the case of the Keso product line, not to exceed the greater of: (i) five percent (5%) of sales; or (ii) a per unit rate of fifty cents (\$.50) plus the equivalent in United States currency of .75 Swiss franc.

C. Each license or sublicense granted pursuant to this paragraph shall include, if desired by the licensee or sublicensee, all of Kidde's rights in and to the registered trademarks "Integralock" (T.M. Reg. No. 861,953) and "Keso" (T.M. Reg. No. 784,400) and U.S. Patents Nos.

3,303,677 and DES 206,397 as well as any and all future patents, patent applications and know-how issued, filed or acquired by Kidde which relate to the Keso product line or the Integralock.

D. Nothing contained herein shall be deemed to prevent Kidde from refusing to grant a license or sublicense to any person for *bona fide* business reasons indicating that such person cannot or will not fulfill the duties, obligations and responsibilities of a licensee or sublicensee, including but not limited to the following reasons: (a) lack of financial responsibility or credit worthiness; (b) inability to agree upon reasonable terms and conditions of a license or sublicense agreement; (c) failure to meet any qualification imposed by law or governmental regulation or specification; or (d) information indicating that the grant of a license or sublicense to such person would impair Kidde's goodwill or the confidentiality of its business secrets. *Provided, however,* that any such refusal shall be made in writing, stating the reasons therefor *and provided further* Kidde shall notify the Federal Trade Commission in writing within ten (10) days of any such refusal stating the reasons therefor.

E. Upon the request of any licensee or sublicensee, Kidde shall furnish to said licensee or sublicensee necessary technical information and know-how and make available such supervisory personnel and technical assistance as may reasonably be necessary to establish production of the Integralock and/or the Keso product line on a going basis. For a period of two (2) years following the date of each license or sublicense agreement, upon the request of each licensee or sublicensee, Kidde shall make available at a place designated by the licensee or sublicensee, a person or persons technically qualified in the manufacture of the Integralock and/or the Keso product line for the purpose of furnishing to the licensee or sublicensee such manufacturing, engineering and technical assistance and know-how as may reasonably be required for the manufacture of the Integralock and/or Keso product line which Kidde has and/or may acquire and which it may at that time lawfully disclose. For each such person or persons furnished Kidde may charge an amount not to exceed his reasonable travel and living expenses and the actual cost to Kidde for the time involved.

F. If, during the term of the license or sublicense agreement, Kidde develops or receives any new technical information pertaining to the manufacture of the Keso product line and/or the Integralock, Kidde shall promptly and fully make available to each licensee or sublicensee such technical information.

G. The duration of any license or sublicense granted pursuant to the terms of this order, shall, at the option of the licensee or sublicensee, be for a duration of not less than fifteen (15) years,

*provided, however,* that provision may be made for the termination of said license or sublicense agreements by either party on 90 days notice to the other if the other party shall be in default or breach of any material provision of said license or sublicense agreement and such default or breach shall not have been cured within such 90 day period. Except as provided herein the rights granted to any licensee or sublicensee shall not be terminated or abated.

## VII

*It is further ordered,* That nothing in this order shall be deemed to prevent any licensee or sublicensee or applicant for a license or sublicense, from attacking in any proceeding or controversy, the validity, scope, or enforceability of any patent nor shall this order be construed as imputing any validity, enforceability or value to any such patent.

## VIII

*It is further ordered,* That Kidde shall not voluntarily dispose or permit the disposition of any patents, trademarks or rights thereunder or voluntarily perform or fail to perform any act so as to deprive it of the power to grant or cause to be granted the licenses or sublicenses required by this order. However, the obligations set forth in this order with respect to the granting of licenses or sublicenses shall be subject to Kidde's continued right to license or sublicense said products and said obligations shall automatically abate if, and to the same extent that Kidde's right to license or sublicense should be terminated or become impaired during the period hereof; *provided, however,* that Kidde shall notify the Federal Trade Commission in writing immediately upon knowledge that any such termination or impairment will occur or has occurred setting forth the circumstances and reasons therefor.

## IX

*It is further ordered,* That Kidde shall, within six (6) months after the effective date of this order, and every six (6) months thereafter, until Kidde has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Kidde is endeavoring to comply or has complied with this order. All compliance reports shall include among other things that may from time to time be required, a summary of contacts, offers, contracts or negotiations with anyone for

