

Complaint

87 F.T.C.

IN THE MATTER OF

JOHNSON PRODUCTS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2788. Complaint, Feb. 10, 1976—Decision, Feb. 10, 1976*

Consent order requiring a Chicago, Ill., manufacturer and distributor of cosmetics and its Omaha, Neb., advertising agency, among other things to cease misrepresenting that Ultra Sheen Permanent Creme Relaxer is "gentle," "cool to the scalp," and "easy to use"; and failing to disclose in advertising certain material facts concerning health hazards associated with the use of its products. Further, respondents are required to place clear and specific warnings as to the safety of the product upon all packaging, displays and advertising.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *George M. Burditt, Burditt & Calkins, Chicago, Ill. Felix H. Kent, Hall, Dickler, Lawler, Kent & Howley, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson Products Company, Inc., and Bozell & Jacobs, Inc., corporations, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Johnson Products Company, Inc. (Johnson Inc.) is a Delaware corporation with its office and principal place of business located at 8522 So. Lafayette Ave., Chicago, Illinois.

Respondent Bozell & Jacobs, Inc. is a Delaware corporation with its office and principal place of business located at 10250 Regency Circle, Omaha, Nebraska.

All allegations in this complaint stated in the present tense include the past tense.

PAR. 2. Respondent Johnson Inc. engages in the manufacturing, advertising, offering for sale, sale, and distribution of Ultra Sheen Permanent Creme Relaxer (hereinafter "Ultra Sheen relaxer"), a "cosmetic" as that term is defined in Section 15 of the Federal Trade Commission Act. The relaxer is an emulsion which contains as its active ingredient sodium hydroxide, commonly known as lye. The emulsion is applied to the hair, rinsed from the hair, and neutralized with a special

shampoo. The relaxer and neutralizing shampoo are used by consumers and professional beauticians for the purpose of straightening curly hair.

PAR. 3. Respondent Bozell & Jacobs, Inc. is the advertising agency for Johnson Inc., and in such capacity creates, prepares, and places for publication, and causes the dissemination of advertisements, including but not limited to the advertisements referred to herein, to promote the sale of Ultra Sheen relaxer.

PAR. 4. In the course and conduct of its business, Johnson Inc. causes Ultra Sheen relaxer, when sold, to be sent from its place of business in Illinois to retail stores and beauty salons and other purchasers located in various other States of the United States and the District of Columbia. Thus, Johnson Inc. maintains a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their businesses, respondents disseminate and cause to be disseminated certain advertisements concerning Ultra Sheen relaxer, (1) by United States mails, magazines of interstate circulation, radio and television broadcasts of interstate transmission, and by various other means in or having an effect upon commerce, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Ultra Sheen relaxer, (2) by various means, for the purpose of inducing, or which are likely to induce, the purchase in or having an effect upon commerce of Ultra Sheen relaxer, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. Typical and illustrative of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following:

In Magazines:

Why not give Mother Nature a little gentle help with Ultra Sheen Permanent Creme Relaxer?

It's the truly gentle no-base perm that offers you hair style possibilities you never enjoyed before.

Ultra Sheen Permanent Creme Relaxer. It makes changing your hair style — anyway from smooth and sleek to bouncy curls — as easy as changing your mind.

On Television:

Video

OPEN ON ACETYLENE TORCH CUTTING. STEEL STACK FALLS.
CUT TO INTERVIEWER WALKING FROM BEHIND SCULPTURE.
CUT TO TWO-SHOT.

Audio

MAN: Can we talk?

WOMAN: See something you like?

Complaint

87 F.T.C

MAN: Your hair.*WOMAN:* *What?**MAN:* No really. It's my job. How do you keep it looking so good?

BACK TO WOMAN MOVING AROUND SCULPTURES.

WOMAN: Ultra Sheen Relaxer and Conditioner and Hair Dress.

CU WOMAN.

MAN: Why Ultra Sheen?

CUT TO PRODUCT SHOT.

WOMAN: It works. The relaxer goes on cool while it really relaxes my hair. And the Conditioner and Hair Dress protects against moisture, so my hair doesn't go back.

BACK TO CU WOMAN.

LS OF STUDIO AND PEOPLE.

MAN: It looks great.

WOMAN REPLACES GOGGLES COOLY.

WOMAN: Thank you. See anything else you like?

PAR. 7. Through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set forth herein, respondents represent, directly or by implication, that:

A. Ultra Sheen relaxer is gentle to hair.

B. Ultra Sheen relaxer is gentle to skin and in all instances feels cool on the skin.

C. Ultra Sheen relaxer is easy to use.

PAR. 8. In truth and in fact:

A. Ultra Sheen relaxer is not gentle to hair. Sodium hydroxide, the active ingredient in Ultra Sheen relaxer, straightens hair by breaking down the cells of the hair shaft. The relaxing process weakens hair, and, in some instances, makes it brittle and causes partial or total hair loss.

B. Ultra Sheen relaxer does not feel cool on the skin of all users nor is it gentle to skin. The sodium hydroxide in Ultra Sheen relaxer is a primary skin irritant. It is caustic to skin and breaks down the cells which form the epidermis. Ultra Sheen relaxer in some instances causes skin and scalp irritation and burns, which may produce scars and permanent follicle damage. It also causes eye irritation and may impair vision.

C. Ultra Sheen relaxer is not easy to use.

1. The directions for use of said product warn against applying the relaxer to the scalp or allowing the relaxer to have contact with eyes or skin. Yet it is nearly impossible for the consumer who applies the relaxer to his or her own hair to keep it off scalp and face and out of eyes, where it may cause irritation and injury.

2. The directions for use of said product state that the relaxer should be left on the hair until the hair is adequately relaxed, between eight and eighteen minutes depending on individual hair type and characteristics. The non-professional user of Ultra Sheen relaxer lacks

the training and experience to make the evaluation of the proper timing of application for his or her individual hair type. Furthermore, in many instances it is difficult for the non-professional user to complete application, combing and smoothing within the time dictated by his or her individual hair type for satisfactory results.

Therefore, the advertisements, statements and representations referred to in Paragraphs Six and Seven are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act and are false, misleading and deceptive.

PAR. 9. Respondents advertise Ultra Sheen relaxer without disclosing that:

A. Ultra Sheen relaxer can cause skin and scalp irritation, hair breakage and eye injury.

B. Directions must be followed carefully.

Such facts are material and, if known to consumers, would be likely to affect their decision to purchase Ultra Sheen relaxer. Therefore, respondents' advertisements of said product are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and are false, misleading and deceptive.

PAR. 10. In the further course and conduct of its business, Johnson Inc. offers for sale, sells and distributes Ultra Sheen relaxer without disclosing on the retail product package of said product the following information:

A. The product contains sodium hydroxide (lye). It can cause skin and scalp burns, hair loss, and eye injury. Directions must be followed carefully.

B. The product should not be used if scalp is irritated or injured.

C. The product should not be used on bleached, dyed or tinted hair. If hair has been relaxed, relaxer should be applied only to the new growth, as described in the directions.

D. If the relaxer causes skin or scalp irritation, it should be rinsed out immediately and neutralized with the shampoo in the kit. If irritation persists, a physician should be consulted.

E. If the relaxer gets into eyes, eyes should be rinsed immediately and a physician should be consulted.

Such facts are material to and, if known to potential customers, would be likely to affect their decision to purchase Ultra Sheen relaxer. Furthermore, knowledge of such facts by consumers would tend to reduce the hazards of hair, skin and eye injury posed by the use of Ultra Sheen relaxer. Therefore, failure to disclose said material facts on the retail product package is an unfair and deceptive act or practice.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive and unfair statements, representations, acts and practices and the dissemination of the aforesaid "false advertisements" has the capacity and tendency to mislead members of the consuming public and professional beauticians into the erroneous and mistaken belief that said statements and representations are true and substantiated, and into the purchase of substantial quantities of Ultra Sheen relaxer by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of their businesses, respondents are in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as sold by respondents.

PAR. 13. The aforesaid acts and practices of respondents, including the dissemination of "false advertisements," are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts or practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle 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 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, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules,

the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Johnson Products Company, Inc. (Johnson Inc.) is a Delaware corporation with its office and principal place of business located at 8522 So. Lafayette Ave., Chicago, Illinois.

Respondent Bozell & Jacobs, Inc. is a Delaware corporation with its office and principal place of business located at 10250 Regency Circle, Omaha, Nebraska.

B. 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 Johnson Inc. and Bozell & Jacobs, Inc., corporations, their successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of Ultra Sheen relaxer, or any cosmetic in or affecting commerce, as "cosmetic" and "commerce" are defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in writing, orally, visually, or in any other manner, directly or by implication, that:

1. Any hair straightening product is gentle or safe.
2. Any hair straightening product feels cool to skin or scalp.
3. Any hair straightening product is easy to use or to apply.

B. Representing, in any manner, the safety or efficacy of any cosmetic or the ingredients therein, unless at the time such representation is made respondents have in their possession a reasonable basis, consisting of competent and reliable controlled tests, to support such representation; or misrepresenting in any manner the nature of any such product or its ingredients or the effect of any such product or its ingredients on hair or skin or any other structure of the body.

C. Disseminating or causing to be disseminated any advertisement of Ultra Sheen relaxer or any similar product, which fails to disclose, clearly and conspicuously with nothing to the contrary or in mitigation thereof, the following statement exactly as it appears below:

WARNING: Follow directions carefully to avoid skin and scalp irritation, hair breakage and eye injury.

Provided, however, That Paragraph I of this order shall apply to

respondent Bozell & Jacobs, Inc. only with respect to Ultra Sheen relaxer, and any cosmetic manufactured by respondent Johnson Inc., and any hair straightening product or process.

Provided, further, That Paragraph I of this order shall not become effective prior to September 8, 1975.

II

It is further ordered, That respondents Johnson Inc. and Bozell & Jacobs, Inc., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Ultra Sheen relaxer or any cosmetic, as "cosmetic" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mail or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains a representation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any such product in or having an effect on commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains a representation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

Provided, however, That Paragraph II of this order shall apply to respondent Bozell & Jacobs, Inc. only with respect to Ultra Sheen relaxer, and any cosmetic manufactured by respondent Johnson Inc., and any hair straightening product or process.

Provided, further, That Paragraph II of this order shall not become effective prior to September 8, 1975.

III

It is further ordered, That respondent Johnson Inc., a corporation, its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale, or distribution of Ultra Sheen relaxer or any similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as

amended, do forthwith cease and desist from failing to include clearly and conspicuously on an information panel of the retail product package, on the package insert, and on the label of the relaxer container of any such product, with nothing to the contrary or in mitigation thereof, the following disclosures exactly as they appear below:

WARNING

1. This product contains [percentage] sodium hydroxide (lye). You must follow directions carefully to avoid skin and scalp burns, hair loss, and eye injury.
2. Do not use if scalp is irritated or injured.
3. Do not use on bleached, dyed or tinted hair. If you have previously relaxed your hair, relax only the new growth, as described in the directions.
4. If the relaxer causes skin or scalp irritation, rinse out immediately and neutralize with the shampoo in the kit. If irritation persists or if hair loss occurs, consult a physician.
5. If the relaxer gets into eyes, rinse immediately and consult a physician.

Respondents shall comply with this provision by August 15, 1975 or by the effective date of this order, whichever shall occur first.

IV

It is further ordered, That respondent Johnson Inc. shall instruct each beauty salon which sells or uses Ultra Sheen relaxer and each retail store and place of distribution of said product, to destroy each display advertisement for Ultra Sheen relaxer which contains any of the words or representations prohibited by Paragraph I of this order or which fails to make the affirmative disclosure for such product required by Paragraph I of this order.

V

It is further ordered, That respondents shall distribute a copy of this order to their present and future officers, directors, and operating divisions and that respondents secure from each such person a signed statement acknowledging receipt of the order.

VI

It is further ordered, That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

VII

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

VIII

It is further ordered, That respondents shall, within sixty days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF
EXXON CORPORATION, ET AL.

Docket 8934. Order, Feb. 17, 1976

Commission vacates the administrative law judge's order of Feb. 10, 1976, regarding document preservation.

Appearances

For the Commission: *Roger B. Pool, Roger J. McClure, Rhett R. Krulla, Anne R. Schenof, Ira S. Nordlicht, Phillip M. Dantes, James H. Thessin, Patrick J. Quinlan, David I. Haberman, Harold L. Cushenberry, Jr., Brian H. Siegal, Joseph H. Mattingly, Karen E. Chandler, Sheldon C. Hofferman, Barry A. Pupkin, Robert J. Enders, Joan F. Hartman and Lewis K. Wise.*

For the respondents: *William Simon*, Washington, D.C. for Exxon Corporation. *Robert F. McGinnis*, New York City for Texaco, Inc. *Jesse P. Luton*, Houston, Tex. for Gulf Oil Corporation. *J. Wallace Adair*, Washington, D.C. for Shell Oil Company.

ORDER VACATING TEMPORARY PRESERVATION ORDER

Upon consideration of the Application for Commission Review of Administrative Law Judge's Order of February 10, 1976 re Document Preservation, the Commission has determined that the order should not have issued *ex parte*. The Commission's decision is without prejudice to complaint counsel's reapplying for a preservation order on notice to respondents and upon the factual showing described at p. 38 of the opinion entered in *Exxon Corp. v. Federal Trade Commission*, Civil Action No. 75-167 (D. Del.) on January 30, 1976. The Commission does not assume that respondents will permit potentially relevant evidence to be destroyed. Accordingly,

It is ordered, That the aforesaid order of February 10, 1976, be, and it hereby is, vacated.

Modifying Order

87 F.T.C.

IN THE MATTER OF

STEREO EQUIPMENT SALES, INC. T/A BALTIMORE
STEREO WHOLESALERS, ETC., ET AL.MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2740. Decision, Oct. 21, 1975—Modifying Order, Feb. 17, 1976*

Order modifying an earlier order dated Nov. 19, 1975, 86 F.T.C. 930 40 F.R. 53552, by permitting respondents to omit the shipping weights of advertised items as long as respondents charge a flat percentage of the order price for shipping and handling.

Appearances

For the Commission: *Alan L. Cohen* and *Thomas J. Keary*.

For the respondents: *H. George Schweitzer, Heffelfinger, Schweitzer & Rabil*, Washington, D.C.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO
CEASE AND DESIST

By petition dated December 18, 1975, respondents have requested the Commission to modify its order of October 21, 1975 [86 F.T.C. 930] to permit respondents to omit the shipping weights of advertised items as long as respondents charge a flat percentage of the order price for shipping and handling. The Bureau of Consumer Protection has filed an answer wherein it advises that it does not oppose respondents' request.

The Commission has duly considered respondents' request and has determined that it should be granted.

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by striking Paragraph Four and substituting therefor the following:

4. Failing to disclose, in any brochures, flyers, catalogs, letters, oral representations or other solicitations of orders which provide the purchaser with the means to order merchandise from respondents, the shipping weight of any of the items of merchandise offered; *provided, however*, That the shipping weight need not be set forth on any items of merchandise for which the respondents charge a flat percentage of the order price for shipping and handling if that fact is clearly disclosed in accordance with Paragraph 5 of this order.

IN THE MATTER OF

MAN PRODUCTS, INC., ET AL.

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

Docket C-2789. Complaint, Feb. 17, 1976—Decision, Feb. 17, 1976

Consent order requiring a Glen Cove, N.Y., manufacturer and installer of all-steel utility buildings and cellar doors, and two of its affiliates, among other things to cease misrepresenting their products as burglar proof and weatherproof and making other false claims; failing to honor estimates made by their representatives; and failing to disclose to consumers their right-to-cancel any contract they have signed within three business days. Further, respondents are required to complete installation of their products within 90 days of the date of sale or to make full refund of monies paid.

Appearances

For the Commission: *Martin D. Gorman.*

For the respondents: *Zola A. Aronson, Conroy, Guirgio, DePoto & Merritt, Syosset, N.Y.*

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 Man Products, Inc., M.J.M. Corporation, and Man Contracting Corp., corporations and Attilio Mancusi, individually and as an officer of said corporations, hereinafter sometimes 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. Respondents Man Products, Inc., M.J.M. Corporation, and Man Contracting Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. All of the above-named corporate respondents have their principal offices and places of business at 100 Carney St., Glen Cove, New York.

Respondent Attilio Mancusi is an officer of each of the corporate respondents herein named, and he formulates, directs and controls the policies, acts and practices of said corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondents.

PAR. 2. Respondents, are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale, distribution and installation of all steel utility buildings, and all steel cellar doors, hereinafter sometimes referred to as "all steel structures" and related products to the public at retail.

COUNT I

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

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning their products and services by the United States mail and by various other means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers of interstate circulation and the mailing of brochures through the United States mail, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their merchandise.

PAR. 5. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale, purchase and installation of their all steel structures, respondents have made, and are now making, numerous statements and representations by repeated advertisements in newspapers of general interstate circulation and in other promotional literature, brochures and letters and by oral statements and representations of their salesmen to prospective purchasers.

Typical and illustrative of the foregoing, but not all-inclusive thereof, are the following:

Install Man's completely burglar proof all steel door.

BURGLAR PROOF LOCKING SYSTEM

Garage Door type lock * * * can be locked from * * *

217

Complaint

Most robberies are caused by burglars breaking through old wooden cellar doors. Install MAN'S Completely burglar proof all steel cellar door.

Fully automatic steel door works with TORSION BARS like trunk of car-No heavy lifting.

ALL WEATHER PROOF-Overlapped flanges on frame and door assumes snug fit. Keeps out rain, snow and wind.

Installed by Our Qualified Mechanics in Less Than A Day! If you are interested we will send a mechanic to measure the job and discuss the work with you.

With MAN PRODUCTS, your needs are inspected in advance by one of our own experienced mechanics. This man is trained to judge expertly what your needs are for a satisfactory and economical installation.

MAN'S METHOD MAKES A WALL INTO A DOOR IN A MATTER OF HOURS Whether your need is for a new life-time steel top to replace an existing cellar door or a complete enclosed steel basement entrance with excavation, steps, cover and doorway, it is reassuring to know that one source, MAN PRODUCTS, does the complete job.

PERMANENCE, BURGLAR PROOF, WEATHER PROTECTION, EASE OF HANDLING, NEATNESS OF APPEARANCE, AND DESIGN are some of the exclusive features which will make you the wise and proud owner of our product * * * Every product is factory adapted to your particular needs. For this reason, we cannot quote prices without first seeing the situation. Don't put off the opportunity to provide your family with the proper protection while increasing the value of your home with an economical, weather and burglar proof ALL STEEL CELLAR DOOR.

PAR. 7. By and through the use of the above-quoted statements and representations in Paragraph Six and others of similar import and meaning, not specifically set out herein, the respondents represent, and have represented, directly or by implication, that:

1. Respondents are selling completely burglar proof doors.
2. Purchasers of respondents' products will obtain complete protection and maximum security against theft because of the reliability and design of component parts and expertise of installers and supervisors.
3. Respondents' all steel products are structured so that they are all weather proof, providing complete protection against all inclement weather.
4. Respondents' all steel products will be installed by highly qualified mechanics who will provide satisfactory installation through good installation techniques.
5. Purchasers of respondents' products will be provided complete installation within a reasonable time.
6. Respondents' steel products and installation will provide purchasers with a cellar door that is durable, easy to operate and which functions properly.

PAR. 8. In truth and in fact:

1. Respondents' all steel structures will not provide complete protection against theft.

2. In many instances there is faulty workmanship in the product or installation causing the door not to close properly thereby making it impossible to lock.

3. Respondents' all steel structures do not provide complete protection against inclement weather. To the contrary, there are numerous instances where installed structures peel, leak and rust.

4. Respondents' mechanics have not provided satisfactory installation. To the contrary, there are numerous instances of poor workmanship in the installation which allow leakage and make it impossible to close the door properly.

5. The speedy installation implied by respondents is not provided soon after purchase nor is the job completed in one day. To the contrary, in many instances installation is not commenced for several months and is not completed for an extended period thereafter.

6. In many instances doors do not work easily, torsion bars fit improperly or doors cannot be locked because of poor installation or product failure.

PAR. 9. Therefore, the aforesaid statements and representations regarding respondents' products and installations as set forth in Paragraphs Six and Seven were, and are, false, misleading, unfair and deceptive in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Nine hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the further course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their all steel structures, respondents, through the representations and practices set forth in Count I and others of similar import and meaning, but not expressly set out herein, have represented, and are now representing, directly and by implication, that their products are free of defects in material and workmanship.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the expert inspection to estimate the cost of installation, the quality and durability of their all steel structures and the time and manner in which

respondents will provide installations and perform various adjustments, replacements and repairs.

Moreover, respondents warrant in their contracts that their products are free of defects in material and workmanship for a period of 90 days from date of installation.

PAR. 11. By and through the use of the aforementioned warranty in respondents' sales contracts, together with the aforesaid oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. All steel structures sold by respondents will be delivered to purchasers and installed by respondent free from damages or defects.

2. All steel structures, which are delivered to purchasers and/or installed with damages or defects, will be repaired or replaced within a reasonable time.

3. All steel structures, which are delivered to purchasers and/or installed with damages or defects, will be repaired to the satisfaction of the purchasers.

4. All steel structures, which are delivered to purchasers and/or installed with damages or defects, will be replaced to the satisfaction of the purchasers.

5. By virtue of Man Products' warranty in their sales contract, damaged or defective all steel structures will be repaired or replaced free of charge by Man Products within a ninety-day period.

6. Sales include a service component of estimates which will realistically determine the individual needs and which will be binding.

PAR. 12. In truth and in fact:

1. In many instances, all steel structures sold by respondents are delivered to purchasers and installed with damages and/or defects.

2. In many instances, all steel structures which are delivered to purchasers and installed with damages and/or defects, are not repaired or replaced within a reasonable time.

3. In many instances, all steel structures which are delivered to purchasers and installed with damages and/or defects, are not repaired or replaced to the satisfaction of the purchasers.

4. In many instances, damaged and defective all steel structures are not repaired or replaced to the satisfaction of the customers within the warranty period or in conformance with Man Products' warranty.

5. Respondents have failed to honor their estimate obligations and in some instances have attempted to cancel contracts in order to coerce customers to accept a new contract at a much higher price. In other instances respondents have refused to honor warranties when the

improper functioning of respondents' products were the result of inaccurate estimates.

PAR. 13. Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products, installation and other services, were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Thirteen are incorporated herein by reference in Count III as if fully set forth verbatim.

PAR. 14. In the further course and conduct of their business, and for the purpose of inducing and securing sales of Man Products' all steel structures, respondents and their representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances, separately and through the use of the false, misleading and deceptive representations and practices set forth in Paragraphs Six, Seven, Ten and Eleven, respondents or their representatives have induced customers into signing contracts without disclosing to the customer, orally or in writing, that installation may not begin for several months nor completed for an extended time thereafter; that there are no installations performed during winter months; and that respondents fail to give refunds and, in fact, may penalize customers who attempt to cancel contracts when installation has not been performed within a reasonable time.

2. In a substantial number of instances, separately and through the use of the false, misleading and deceptive representations and practices set forth in Paragraphs Six, Seven, Ten and Eleven, respondents or their representatives have induced customers into signing contracts without disclosing to the customer, orally or in writing, material facts regarding the condition of customer's premises and its effect on the functioning of respondent's structure, and the difficulty in obtaining a refund or to have additional repairs made when their structures fail to perform properly due to deficiencies in purchaser's property or premises after an estimate has been given.

PAR. 15. The failure of respondents to disclose material facts separately, and in conjunction with their aforesaid statements and representations, has the tendency and capacity to mislead prospective purchasers into mistaken beliefs, as to the total cost which they will have to incur if they purchase respondents' all steel structures, as to the relative benefits and disadvantages of such purchases and as to

their options and rights in regard to such purchases. Thus, respondents have failed to disclose material facts which, if known to certain customers, would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase all steel structures being offered for sale.

PAR. 16. In the further course and conduct of their business, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Six, Seven, Ten and Eleven above, respondents or their representatives have been able to induce customers into signing the contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 17. Therefore, respondents' use of such deceptive, exploitive and unfair representations, tactics and contracts, and respondents' failure to disclose material facts, as aforesaid, orally and in writing, was and is unfair, false, misleading and deceptive and constituted and now constitutes an unfair, misleading and deceptive act and practice, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Sixteen hereof are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 18. By virtue of respondents' misleading, deceptive and false representations, acts and practices, set forth in Counts One through Three, customers have been induced to pay substantial sums of money to respondents for all steel structures. Respondents have received said sums and have failed to offer or agree to refund payments to purchasers when merchandise has been or is delivered in a damaged or defective condition or when such merchandise has not been installed, repaired or replaced by respondents within a reasonable period of time.

PAR. 19. In connection with their sales, respondents include in the contract, a provision which limits venue for any action commenced by any purchaser including those who reside in States other than New York (hereinafter referred to as out-of-State plaintiffs) to the Supreme Court of Nassau County, New York. Courts located in the State and county where out-of-State plaintiffs reside or where they signed the contracts sued upon could be used for these suits. Almost all out-of-State plaintiffs have received respondent's catalogs or other advertis-

ing material, and executed purchase orders or contracts, in their home States. Almost all out-of-State plaintiffs have had no pertinent contact with the State of New York other than their dealings with respondents. The distance, cost and inconvenience of commencing such suits in New York place a virtually insurmountable burden on out-of-State plaintiffs. Respondents thus effectively deprive these plaintiffs of a reasonable opportunity to commence an action. Therefore, such use of distant or inconvenient forum is unfair.

PAR. 20. In connection with their sales, respondents include in the contract, a provision which limits the time of service of process for any action commenced by the buyer to six months from the date of the agreement. Such a limitation precludes many purchasers from bringing an action since numerous installations are delayed several months and defective workmanship and poor quality installation does not reveal itself for some time thereafter. Respondents thus effectively deprive these plaintiffs of a reasonable opportunity to commence an action. Therefore, such a limitation of the time of service of process is unfair.

PAR. 21. Therefore, the use by the respondents of the aforesaid acts and practices and their continued retention of the said sums under the circumstances described herein are all to the prejudice and injury of the public and constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

COUNT V

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Twenty-One hereof are incorporated by reference in Count V as if fully set forth verbatim.

PAR. 22. By and through the use of advertisements set forth in Paragraph Six, and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have also represented, directly or by implication, that respondents had a reasonable basis from which to conclude that individuals who purchase, and have a Man Products' all steel structure installed, receive complete protection, maximum security and a total guarantee against theft.

PAR. 23. In truth and in fact, at the time the aforesaid statements and representations were made, respondents had no reasonable basis from which to make the conclusion set forth in Paragraph Twenty-Two.

PAR. 24. Therefore, the statements and representations contained in the advertisements referred to in Paragraph Six and Twenty-Two were and are false, misleading and deceptive; and the respondents' dissemination of the commercials and advertisements referred to in Paragraph Six, without a reasonable basis for making such representa-

tions, were and are unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT VI

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Twenty-Four are incorporated herein by reference in Count VI as if fully set forth verbatim.

PAR. 25. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 26. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 27. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce 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 New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondents Man Products, Inc., M.J.M. Corporation and Man Contracting Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal office and place of business located at 100 Carney St., Glen Cove, New York.

Respondent Attilio Mancusi is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents. His principal office and place of business is located at the above-stated address.

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

ORDER

A. *It is ordered*, That respondents Man Products, Inc., M.J.M. Corporation, Man Contracting Corp., corporations, their successors and assigns and their officers, and Attilio Mancusi, individually and as an officer of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale, installation or distribution of all steel cellar doors or other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually or in writing, directly or by implication, that their all-steel cellar doors are burglar proof or misrepresenting the manner in which protection is provided.

2. Representing, orally, visually or in writing, directly or by implication, that their all-steel cellar doors are all-weatherproof or misrepresenting the weather-proofing abilities of their products.

3. Failing to install respondents' all-steel cellar doors within a reasonable time unless delays are disclosed.

4. Misrepresenting, orally, visually, or in writing, directly or by implication, the date when installation will commence or misrepresenting in any manner the time for installation to be completed.

5. Representing, orally, visually or in writing, directly or by implication, that Man Products' all-steel cellar doors are durable, easy to operate structures which will function properly unless such advertised products are capable of adequately performing the function for which they are offered; or misrepresenting, in any manner, the performance characteristics or quality of respondent's products.

6. Representing, orally, visually or in writing, directly or by implication, that estimates are determined by expert mechanics or other experienced professionals unless such inspectors have the requisite professional training or experience.

7. Representing, orally or in writing, directly or by implication, that any of respondents' products, installations or services are warranted or guaranteed unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such warranty or guarantee.

B. *It is further ordered*, That beginning the effective date of this order, respondents shall:

1. Furnish each customer, at the time the customer signs a sales contract, with a clear and conspicuous written date certain for completion on that contract, not more than ninety (90) days from the date the contract was signed.

2. At the time the contract is signed, if respondents foresee that they will not be able to install within 90 days, they must so disclose, furnish a new date certain for completion and obtain a written consent from the consumer.

3. Set forth customers cancellation rights in the contract so that if performance is not made within a 90-day period set forth in the contract, the customer has the right and option to cancel.

4. Cancel the contract upon request of the consumer and make a full refund within one week of the request, if installation cannot be completed within the 90-day period stated for completion.

C. *It is further ordered*, That beginning the effective date of this order, respondents shall honor estimates made by its representatives.

D. *It is further ordered*, That respondents cease and desist from:

1. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution,

which is in the same language, as that principally used in the oral sales presentation and which shows the date of the transaction, a description of the merchandise to which it applies and the total cost to the customer of the same and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

2. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language, as that used in the contract.

NOTICE OF CANCELLATION

[Date]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

217

Decision and Order

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO _____ at _____ NOT LATER THAN MIDNIGHT OF [DATE].

I HEREBY CANCEL THIS TRANSACTION.

[Date]

[Buyer's signature]

3. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

4. Including in any door-to-door sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

5. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

6. Misrepresenting in any manner the buyer's right to cancel.

7. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (a) refund all payments made under the contract or sale; (b) return any goods or property traded in, in substantially as good condition as when received by the seller; (c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

8. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

9. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

10. *Provided, however,* That nothing contained in Paragraph D of this order shall relieve respondents of any additional obligations respecting contracts required by Federal law or the law of the State in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the State in which such different obligations are required. The Commission, upon a showing of inconsis-

teny, shall make such modifications as may be warranted in the premises.

E. *It is further ordered*, That in addition to other rights given to a customer pursuant to this order:

1. If the respondents and a customer are unable to agree upon a settlement of any controversy involving the sale, repair, service, installation or guarantee of merchandise, the failure to adequately replace or repair damaged, defective or nonconforming merchandise; the failure to honor guarantees or warranties; the failure of equipment to function properly or as represented; the failure to repair any damages done to the premises of customers during installation of respondents' equipment; cancellation rights to which the customer is entitled; or involving sales presentations to induce customers to purchase respondents' equipment which contained representations prohibited by this order or which failed to make disclosures that were required by this order then, at the option of the customer, such customer shall have the right to submit the issues to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the customer, which will be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

2. Respondents shall provide adequate notification to customers of their right to submit such controversy to arbitration and respondents shall incorporate the following statement on the face of all sales contracts with such conspicuousness and clarity as is likely to be read and understood by customers:

NOTICE

Any right or claim which the customers may have arising out of or relating to this contract or any breach thereof shall be settled, at the option of the customer, by arbitration. Such arbitration shall be conducted in accordance with Arbitration Rules of the Consumer-Business Arbitration Tribunal of the Better Business Bureau of Metropolitan New York, Inc., whose offices are located at 110 Fifth Avenue, New York, New York 10011, telephone (212) 989-6150.

Under New York State law, arbitration, if undertaken, is legally binding and final.

3. Whenever respondents are required, pursuant to the terms of this order, to give notice of a customer's right to arbitration, the notice must set forth the name, address and telephone number of the arbitration tribunal and the manner in which arbitration can be obtained. Respondents are authorized and directed to change the instruction as to how to secure arbitration if circumstances so require; including referrals by the Better Business Bureau of Metropolitan New

York to a more convenient office in those circumstances where a purchaser resides outside the New York metropolitan area.

4. Respondents shall comply with and abide by any award or decision rendered pursuant to the arbitration procedures of Paragraph E, subparagraph (1) of this order I.

5. Respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in an action for money allegedly due the respondents or their assignees.

F. *It is further ordered*, That beginning the effective date of this order, respondents shall:

1. Remove that provision in their contract which limits venue for any action commenced by the purchaser to the Supreme Court of Nassau County, New York.

2. Defend suits initiated by purchasers in the county where plaintiff resides or in the county where the plaintiff signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

3. Remove that provision in their contract which limits the time of service of process for any action commenced by the purchaser to six months from the date of the agreement. In addition, respondents shall not reduce the period of limitation below that minimum period provided by law.

H. *It is further ordered*, That for a period of one year, respondents post in a prominent place in each salesroom or other area wherein respondents sell equipment or other products or services, a copy of this cease and desist order, with a notice that any customer or prospective customer may receive a copy on demand.

I. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

J. *It is further ordered*, That:

1. Respondents deliver, by registered mail, a copy of this decision and order to each of its present and future employees, salesmen, agents, solicitors, installers, independent contractors or to any other person or entity which promotes, offers for sale, sells, leases, distributes or installs the products or services included within the scope of this order;

2. Respondents herein provide each person or entity so described in subparagraph (1) above with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

3. Respondents herein inform each person or entity so described in subparagraph (1) above that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order;

4. If such party as described in subparagraph (1) above will not agree to so file the notice set forth in subparagraph (2) above with the respondents and be bound by the provisions of the order, the respondents shall not use or engage or continue the use or engagement of, such party to promote, offer for sale, sell or install any equipment included in this order;

5. Respondents herein inform the persons or entities described in subparagraph (1) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

6. Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (1) above conform to the requirements of this order;

7. Respondents herein discontinue dealing with or terminating the use or engagement of any person or entity described in subparagraph (1) above, as revealed by the aforesaid program of surveillance, who continues on his or her own any act or practice prohibited by this order.

K. *It is further ordered*, That respondents shall forthwith deliver a copy of this order to cease and desist, and a copy of the Commission's news release setting forth the terms of the order, to each advertising agency presently utilized in the course of their business, and that respondents shall, immediately upon opening an account, deliver a copy of such order and news release to any such agency with which they subsequently open an account.

L. *It is further ordered*, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, visual aids and any other such promotional material utilized in the advertising,

promotion or sale of all steel products and other merchandise or services.

M. *It is further ordered*, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify, or exempt respondents from complying with agreements, orders or directive of any kind obtained by any other agency or act as a defense to actions instituted by municipal, State or regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

O. *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 or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That respondent 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.

APPENDIX "A"

Agreement of Parties — The parties shall be deemed to have made these Rules a part of their arbitration agreement. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

Administrator — When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute BBB the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

Panel of Arbitrators — The BBB shall establish and maintain a Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

Change of Claim — After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

Initiation under a Submission — Parties to any existing dispute may commence an arbitration under these Rules by filing at the BBB two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a

statement of the matter in dispute, the amount of money involved, if any, and the remedy sought.

Initiation under an Arbitration Provision in a Contract — Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party may give notice to the other party of his intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and

(b) By filing at the office of the BBB two (2) copies of said notice, together with two (2) copies of the arbitration provisions of the contract.

The BBB shall give notice of such filing to the other party. If he so desires, the party upon whom the demand for arbitration is made may file an answering statement in duplicate with the BBB within seven days after notice from the BBB, in which event he shall simultaneously send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

Fixing of Locale — The parties may mutually agree on the time and place where the arbitration is to be held. If any party requests that the hearing be held at a specific time and place and the other party files no objection thereto within seven days after notice of the request, the time and place shall be the one requested.

If the time and place is not designated within seven days from the date of filing the Submission the BBB shall have power to determine the time and place. Its decision shall be final and binding.

Qualifications of Arbitrator — No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

Appointment from Panel — The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission, the BBB shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the BBB. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the BBB shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the BBB shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

Number of Arbitrators — In disputes involving amounts of \$5000 or less, there shall be one Arbitrator. In all other cases there shall be one Arbitrator unless one or both the parties specifies three Arbitrators. If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed.

Notice to Arbitrator of His Appointment — Notice of the appointment of the Arbitrator, shall be mailed to the Arbitrator by the BBB, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

Disclosure by Arbitrator of Disqualification — Prior to accepting his appointment, the prospective Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of

such information, the BBB shall immediately disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall so advise the BBB in writing. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

Vacancies — If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

Representation by Counsel — Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the BBB of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

Stenographic Record — The BBB shall make the necessary arrangements for the taking of a stenographic or electronic record whenever such record is requested by a party. The requesting party or parties shall pay the cost of such record, unless otherwise agreed.

Interpreter — The BBB shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service if a volunteer interpreter cannot be secured.

Attendance at Hearings — Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

Adjournments — The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

Oaths — Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of his office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, or if required by law or demanded by either party, shall do so.

Witnesses, Subpoenas, Depositions —

(a) The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the Arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the Arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

Majority Decision — Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

Order of Proceedings — A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions or other examination. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions and other examination. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

Arbitration in the Absence of a Party — Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

Evidence — The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

Evidence by Affidavit and Filing of Documents — The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

Inspection or Investigation — Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the BBB to advise the parties of his intention. The Arbitrator shall set the time and the BBB shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

Conservation of Property — The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Closing of Hearings — The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

Reopening of Hearings — The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. If the

reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator may reopen the hearings, and the Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

Waiver of Oral Hearing — The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the BBB shall specify a fair and equitable procedure.

Waiver of Rules — Any party who proceeds with the arbitration after knowledge that any procedure or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

Extension of Time — The parties may modify any period of time by mutual agreement. The BBB for good cause may extend any period of time established by these Rules, except the time for making the award. The BBB shall notify the parties of any such extension of time and its reason therefor.

Communication with Arbitrator and Serving of Notices —

(a) There shall be no communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the BBB for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

Time of Award — The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

Form of Award — The award shall be in writing and shall be signed either by the sole Arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law.

Scope of Award — The Arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties.

The award may require specific performance of a contract; require the acceptance or replacement of merchandise; fix allowances for defective merchandise; declare a contract breached in whole or in part; and/or award money damages in the alternative or otherwise; but the foregoing shall not limit the power of the arbitrators to grant any other remedy or relief which they deem just and equitable within the framework of the Submissions or the contract before the arbitrators.

Award upon Settlement — If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

Delivery of Award to Parties — Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the BBB, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

Release of Documents for Judicial Proceedings — The BBB shall, upon the written

request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

Applications to Court — No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

Expenses — The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic or electronic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required travelling and other expenses of the Arbitrator and of BBB representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

Arbitrator's Fee — Members of the Panel of Arbitrators serve without fee in arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee. Any arrangements for the compensation of an Arbitrator shall be made through the BBB and not directly by him with the parties.

Interpretation and Application of Rules — The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the BBB for final decision. All other Rules shall be interpreted and applied by the BBB.

IN THE MATTER OF
SHAKLEE CORPORATION

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

Docket C-2790. Complaint, Feb. 18, 1976—Decision, Feb. 18, 1976

Consent order requiring an Emeryville, Calif., manufacturer and distributor of food supplements, cosmetics and cleaners, among other things to cease requiring, coercing, threatening or otherwise exerting pressure on any distributor to observe, maintain or advertise established or suggested retail prices. Further, respondent is required to conspicuously state that all pricelists are suggested only and that dealers are permitted to sell Shaklee products to any retail outlets they wish.

Appearances

For the Commission: *Jeffrey Klurfeld.*

For the respondent: *Harvey Applebaum, Covington & Burling,*
Washington, D.C. and *Paul Greenberg,* Los Angeles, Calif.

COMPLAINT

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

PARAGRAPH 1. Respondent Shaklee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1900 Powell St., Emeryville, California.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture, distribution, offering for sale and sale to distributors located throughout the United States of the following products: food supplements, including proteins, vitamins and minerals; cosmetics, toiletries and fragrances; and household and industrial cleaners. In 1973, respondent had sales revenues of approximately \$75 million.

PAR. 3. In the course and conduct of its business as aforesaid, respondent ships or causes such products to be shipped from the State in which they are manufactured and/or warehoused to distributors

located in various other States throughout the United States who engage in resale to other distributors and to members of the general public. At all times relevant herein, respondent has maintained a constant, substantial and increasing flow of such products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act as amended.

PAR. 4. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondent's distributors, in the course and conduct of their business of distributing, offering for sale and selling Shaklee products, are in substantial competition in commerce with one another, and respondent and its distributors are in substantial competition in commerce with other firms or persons engaged in the manufacture or distribution of similar products.

PAR. 5. Respondent markets its products through the direct selling method. Sales are made to the general public by over 100,000 independent distributors. These persons are organized into a distribution system involving three levels. Respondent sells its products directly to "Supervisors," the highest level in the distribution network. In turn, Supervisors resell to Assistant Supervisors, who in turn resell to Distributors. The wholesale prices charged by the Supervisor to his Assistant Supervisor, and by the Assistant Supervisor to his Distributor, are substantially identical to those prices charged by respondent to the Supervisor.

Retail sales to the general public may be made by the Distributor, Assistant Supervisor or Supervisor. The difference between the wholesale prices these persons pay and the retail prices the consumer pays represents the gross profit made on sales to the public. In addition, cash bonuses are paid to these persons calculated as a percentage of the purchases made by the person receiving the bonuses and by persons whom he, or persons sponsored by him, have sponsored.

PAR. 6. To become a Distributor, Assistant Supervisor or Supervisor, respondent has required, and may still require, that such persons enter into written agreements with it which impose, among others, the following terms and conditions:

(1) Under no condition may any Distributor, Assistant Supervisor or Supervisor sell Shaklee products to any retail store or through any fixed retail location which he himself may operate.

(2) Distributors, Assistant Supervisors and Supervisors must resell Shaklee products to the public at established retail prices only.

PAR. 7. All Distributors, Assistant Supervisors and Supervisors are independent contractors. They are required to abide by all the rules

and regulations established by respondent, agree to do so and may be terminated for failure to do so.

PAR. 8. Respondent has published and distributed to all new Supervisors a document entitled "Supervisor's Handbook, a Complete Handbook on Privileges, Policies and Responsibilities," which imposes upon such persons the following terms and conditions, among others:

SECTION FIVE

NO PRODUCTS MAY BE SOLD OR DISPLAYED BY STORES OF ANY KIND.

Any Shaklee salesperson willfully violating this rule forfeits all rights to bonuses and will be subject to cancellation by the Home Office upon the recommendation of his Supervisor and at the discretion of the Home Office. Written notice of forfeiture will be sent to the involved salesperson by his Supervisor, stating PV (Purchase Volume) and bonus affected. A copy of this notice must be filed by the Supervisor with the Home Office, together with a check covering the amount of bonus withheld.

Nothing in this section shall be construed as prohibiting the proper operation of a Shaklee Supervisor's business office.

OPERATING A BUSINESS OFFICE

Every Shaklee Supervisor is encouraged to establish a business office. Such an office enhances his prestige in the eyes of his Distributors, and helps him provide better, more professional service to them. This step, though, should not be taken until one reaches the rank of Supervisor.

Establishing an office places a demanding obligation upon the Supervisor. He must stringently avoid any appearance or suggestion of retail activity.

In fact * * * ABSOLUTELY NO RETAIL SALES ARE PERMITTED FROM A SHAKLEE SUPERVISOR'S BUSINESS OFFICE.

This rule is essential and stringent. It must be observed. The Home Office cannot emphasize this point too strongly.

A business office must be designed for Distributor service, NOT for attracting walk-in retail trade. A window display of product or product literature, for instance, is obviously aimed at walk-in retail trade. No such display should be used. A window display aimed at recruiting new Distributors might be proper, providing it was in good taste.

PAR. 9. Respondent publishes and distributes to all Distributors, Assistant Supervisors and Supervisors a bimonthly periodical entitled *Survey*. In the January 1974 edition, respondent answered questions submitted by its distributors in an article entitled "Most Asked Questions." Among the questions and responses were the following:

Q. Does the company monitor retail store sales?

A. Yes, if you can provide us with a sales receipt accompanied by store name and address, we will contact, either by mail or phone, the business in question. Sales by a Distributor from a retail outlet may result in immediate termination upon receipt of proof.

Q. Does the company monitor unethical selling such as price-cutting, etc.?

A. Yes, if you will provide us with a sales receipt accompanied by the seller's name and address, we will take appropriate action according to the Sales Plan.

COUNT 1

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, by respondent.

PAR. 10. The allegations of Paragraphs One through Nine are incorporated by reference in Count 1 as if fully set forth verbatim.

PAR. 11. The acts, practices, terms and conditions described above are unfair methods of competition because of their tendency to, and the actual practice of, restricting the customers to whom respondent's Distributors, Assistant Supervisors or Supervisors may sell their products; restricting the sources from which respondent's Distributors, Assistant Supervisors or Supervisors may obtain their products; and restricting and preventing Distributors, Assistant Supervisors or Supervisors from reselling or allowing their products to be resold in retail stores or through fixed retail locations.

Said acts, practices, terms and conditions constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondent.

PAR. 12. The allegations of Paragraphs One through Nine are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 13. The acts, practices, terms and conditions described above are unfair methods of competition because of their tendency to, and the actual practice of, fixing, maintaining or otherwise controlling the prices and terms or conditions of sale at which respondent's products are sold in both the wholesale and retail market, and fixing, maintaining or otherwise controlling various fees, bonuses, discounts or rebates required to be paid by one Supervisor, Assistant Supervisor or Distributor to another Supervisor, Assistant Supervisor or Distributor.

Said acts, practices, terms and conditions constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Shaklee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1900 Powell St., Emeryville, California.

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

ORDER

A "distributor," as that term is used throughout this order, is defined as any present or future "Supervisor," "Assistant Supervisor," "Distributor," or any other independent contractor, howsoever denominated, who sells any Shaklee product at wholesale and/or retail.

It is ordered, That respondent Shaklee Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of goods or commodities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

I

1. Requiring, contracting with, or coercing, directly or indirectly, any distributor to refrain from selling any merchandise in any quantity to or through any specified person, class of persons, business or class of businesses.

2. Requiring, contracting with, or coercing, directly or indirectly, any distributor to refrain from establishing a fixed retail location for the sale or distribution of any merchandise in any quantity.

3. Requiring or requesting any distributor, directly or indirectly, to report to respondent or to any person it designates, any person or firm who sells any of respondent's merchandise to a retail store or from a fixed retail location, or acting upon reports so obtained by refusing or threatening to refuse sales to the distributor so reported.

4. Fixing, establishing, maintaining or otherwise controlling, directly or indirectly, the prices and to the extent, if at all, they relate to the pricing of merchandise for resale, discounts, rebates, overrides, commissions, fees or bonuses or other terms or conditions of sale; *provided*, that from the date this order becomes final for a period of three years:

(a) If respondent suggests to its distributors prices for resale of its merchandise, it must state clearly and conspicuously in conjunction therewith the following statement:

The prices quoted herein are suggested only. You are free to determine for yourself the prices you charge.

(b) If respondent suggests to its distributors discounts, rebates, overrides, commissions, fees or bonuses or other terms or conditions of sale to the extent, if at all, they relate to pricing of merchandise for resale, it must state clearly and conspicuously in conjunction therewith the following statement:

The (*e.g.*) discounts quoted herein are suggested only. You are free to determine for yourself the discount you grant.

5. Requiring, coercing, threatening or otherwise exerting pressure on any distributor, directly or indirectly, to observe, maintain or advertise established or suggested retail prices.

6. Requiring or requesting any distributor, directly or indirectly, to report any person or firm who does not observe the retail prices established or suggested by respondent, or acting upon reports so obtained by refusing or threatening to refuse sales to the distributor so reported.

II

Nothing contained herein shall prevent respondent from availing itself of the benefits, if any, accruing to it by virtue of the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

III

It is further ordered, That respondent within thirty (30) days from the date this order becomes final, shall mail a copy of the letter, attached hereto as Exhibit A, without additional enclosures to all distributors.

It is further ordered, That respondent shall for a period of three (3) years from the date this order becomes final, mail a copy of the letter, attached hereto as Exhibit A without additional enclosures, to any future distributor within thirty (30) days of that person's association with respondent.

IV

It is further ordered, That, within thirty (30) days from the date this order becomes final, respondent:

Deliver, or cause to be delivered, a copy of this order, which may exclude Exhibit A, to each of respondent's supervisors and assistant supervisors; and inform each of respondent's supervisors and assistant supervisors that respondent is obligated by this order, to discontinue dealing with any supervisor or assistant supervisor who engages in any conduct which, if engaged in by respondent, would constitute a violation of Paragraph I of this order (hereinafter referred to as "conduct"), under the circumstances set forth in subparagraph 2 of Paragraph V of this order.

V

It is further ordered, That, for a period of three (3) years from the date this order becomes final, respondent:

1. Deliver, or cause to be delivered, a copy of this order to each of respondent's future supervisors and assistant supervisors, within thirty (30) days of that person's becoming either a supervisor or assistant supervisor, unless such person has already received a copy of this order; and inform all such future supervisors and assistant supervisors within the same thirty (30) days that respondent is obligated by this order to discontinue dealing with any supervisor or

assistant supervisor who engages in any "conduct" under the circumstances set forth in subparagraph 2 of this paragraph.

2. Upon receiving written information from any identifiable source(s) indicating an instance of "conduct," as hereinabove defined, by any supervisor or assistant supervisor, promptly investigate the "conduct" to ascertain whether it has in fact occurred. If it is determined after a good faith investigation that such "conduct" has in fact occurred, respondent shall forthwith notify said supervisor or assistant supervisor by certified mail, return receipt requested, that such "conduct" has occurred (hereinafter referred to as "Notice"), and that respondent will discontinue dealing with him upon confirmation by respondent of two (2) further instances of "conduct" within one (1) year. For purposes of determining whether three (3) instances of confirmed "conduct" have occurred within one (1) year, each instance of "conduct" shall be deemed to have occurred on the date when respondent first receives written information indicating the possibility of such "conduct." Upon receiving written information from any identifiable source(s) indicating a total of three (3) instances of "conduct" by the same supervisor or assistant supervisor within any one (1) year period, as hereinabove computed, and after determining that said instances of "conduct" have occurred, respondent shall immediately discontinue dealing with said supervisor or assistant supervisor.

Provided, however, That for purposes of subparagraphs 1 and 2 of this paragraph, only one instance of "conduct" shall be deemed to have occurred for the simultaneous or contemporaneous dissemination of any identical violative writings to different persons, or the simultaneous or contemporaneous making of any violative oral communication to different persons.

VI

It is further ordered, That respondent:

Maintain complete records of any written information which indicates the possibility of an instance of "conduct" by any supervisor or assistant supervisor; and maintain complete records of all "Notices" as required by subparagraph 2 of Paragraph V of this order, and of the supervisor's or assistant supervisor's acknowledgment of receipt of said "Notices." These records shall be retained for a total period of six (6) years from the date this order becomes final and shall be available upon request to representatives of the Federal Trade Commission.

VII

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

It is further ordered, That respondent 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 or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent 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 it has complied with this order.

EXHIBIT A

Dear Shaklee Distributor:

On-----Shaklee entered into a consent order with the Federal Trade Commission. The consent order was entered into for settlement purposes only and by no means constitutes an admission that we violated any law. The order was, however, precipitated by an FTC complaint against the company that would have required lengthy, complex, and debilitating litigation. We are obligated to observe and enforce the provisions of the consent order.

The consent order provides, among other things, as follows:

1. You are free to sell Shaklee products to any type of retail store or from your own home or place of business.
2. You are free to sell Shaklee products at prices of your own choosing.
3. If you previously executed an agreement with Shaklee that obligated you to resell Shaklee products at stated prices, that provision is not binding.
4. Any customer restrictions in any prior agreement with Shaklee, or in the Privileges and Responsibilities, including those regarding sales to or from retail stores, are not binding.
5. If you decide to sell Shaklee products at prices different from our suggested prices or from your own home or place of business or to classes of businesses (e.g. such as retail stores) that we do not suggest, nothing will happen to you. You will not forfeit any bonus or override to which you are entitled.
6. When Shaklee suggests retail prices and/or various merchandising methods you should understand that these "suggested" prices and/or merchandising methods are just that. You are under no obligation to sell Shaklee products at the suggested prices or in the manner suggested.
7. The consent order obligates Shaklee, upon receipt of written complaints subsequently verified by Shaklee, to terminate any supervisor or assistant supervisor who, after fair warning, continues to engage in conduct contrary to any of the FTC order provisions stated above. If you believe that your supervisor or assistant supervisor has engaged in such conduct, you can report this in writing to Supervisor Counseling at the Home Office.

* * * * *

The consent order does not prohibit Shaklee from continuing to recommend that its products be merchandised on a direct selling basis, and we will, accordingly, continue to recommend various methods of merchandising Shaklee products on the basis of the direct selling philosophy. We want to make clear, however, that Shaklee can do nothing to you if you decide not to sell by the direct selling method.

If you have any questions regarding the Order, please contact Shaklee Supervisor Counseling (415) 428-8000.

Officer

IN THE MATTER OF

MARJO SYSTEMS, INC. T/A THERMAL-GARD, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2791. Complaint, Feb. 19, 1976—Decision, Feb. 19, 1976*

Consent order requiring a Rahway, N.J., seller and distributor of thermal replacement windows, with and without burglar alarms, among other things to cease misrepresenting the qualities of their products; misrepresenting that usage of their windows will result in specific fuel cost savings; misrepresenting that their windows contain an electric system making them burglar-proof; and misrepresenting that their windows cannot be jimmied.

*Appearances*For the Commission: *Phyllis Kane.*For the respondents: *Kaplowitz & Wise, Linden, N.J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Marjo Systems Inc., a corporation, formerly named Weather-Shield Enterprises, Inc., d/b/a Thermal-Gard, and Joseph Di Giacomo and Martin L. Waldman, Sr., individually and as officers of said corporation, hereinafter sometimes 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 Marjo Systems Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 1401 Witherspoon St., Rahway, New Jersey. Said corporation does business under the name Thermal-Gard.

Respondents Joseph Di Giacomo and Martin L. Waldman, Sr. are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including the policies, acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

distribution of thermal replacement windows and thermal replacement windows equipped with burglar alarms to the public at retail.

PAR. 3. In the course and conduct of their business as aforesaid, respondents regularly sell and offer to sell said products to residents of the States of New York, New Jersey and various other States of the United States.

Respondents, in the course and conduct of their business as aforesaid, disseminate or cause to be disseminated advertisements in newspapers and other media for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of thermal replacement windows and electronic burglar alarm systems by residents of several states.

Respondents' volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of the products offered for sale, respondents have made, and are now making, numerous statements and representations in said advertisements with respect to said products.

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

* * * world's warmest window * * *

Save up to 30% on fuel costs.

Lower fuel bills summer and winter

* * * substantial savings on fuel, up to 32%.

Over an extended period of time the savings you'll experience will pay you back—with interest.

Now, exclusively in Thermal-Gard windows * * * an additional electronic system that makes the window virtually burglar proof.

All Thermal-Gard replacement windows are equipped with a double-lock security system. When locked the window is impossible to jimmy.

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

1. The thermal replacement windows sold by respondents are the world's warmest windows.

2. Purchasers of the thermal replacement windows sold by respondents will substantially lower their consumption of fuel and thereby realize fuel cost savings of up to 32 percent.

3. The thermal replacement windows sold by respondents contain an electronic system that makes the window burglar proof.

4. The thermal replacement windows sold by respondents are equipped with a double-lock security system which, when locked, prevents the window from being jimmied.

PAR. 6. In truth and in fact:

1. The thermal replacement windows sold by respondents are not the world's warmest windows.

2. Purchasers of the thermal replacement windows sold by respondents do not substantially lower their fuel consumption and do not realize fuel cost savings of up to 32 percent.

3. The thermal replacement windows sold by respondents are not burglar proof.

4. The thermal replacement windows sold by respondents can be jimmied even though double-locked.

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

PAR. 7. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been and now are in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with corporations, firms and individuals engaged in the sale of thermal replacement windows of the same general kind and nature as sold by respondents.

PAR. 8. 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 such advertisements and representations were and are true, and into the purchase of substantial quantities of the products sold by respondents by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a

copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended; and

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

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

1. Respondent Marjo Systems Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 1401 Witherspoon St., Rahway, New Jersey. Said corporation does business under the name Thermal-Gard.

Respondents Joseph Di Giacomo and Martin L. Waldman, Sr. are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent, and their principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That respondents Marjo Systems Inc., a corporation, formerly named Weather-Shield Enterprises, Inc., d/b/a Thermal-Gard or under any other name, its successors and assigns, and its officers, and Joseph Di Giacomo and Martin L. Waldman, Sr., individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division

or any other device, in connection with the advertising, solicitation, offering for sale, sale, distribution or installation of thermal replacement windows, or any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, in any manner, that the thermal replacement windows sold by respondents are the world's warmest windows; or misrepresenting in any manner the qualities of the thermal replacement windows sold by respondents.

2. Representing, in any manner, that the purchasers of the thermal replacement windows sold by respondents will realize fuel cost savings of any specific percentage or any specific amount as the result of installing said windows; or misrepresenting in any manner the amount of savings to be realized by utilizing the windows sold by respondents.

3. Representing, in any manner, that the thermal replacement windows sold by respondents contain an electronic system that makes the window burglar proof.

4. Representing, in any manner, that the thermal replacement windows sold by respondents cannot be jimmed.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist, and a copy of the Commission's news release setting forth the terms of the order, to each advertising agency and advertising medium, such as newspaper publishing company, radio station or television station, presently utilized or utilized subsequent to the effective date of this order to create, prepare or place respondents' advertisements.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to each of their agents, representatives and employees engaged in the offering for sale or sale of respondents' merchandise or services and respondents shall also deliver a copy of this order to each new employee at the time such employee is hired. Respondents shall secure from each such person a signed statement acknowledging receipt of said order and shall retain said statements to be produced for examination upon request of the Federal Trade Commission or its staff.

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

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

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

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

BILL J. ROBERTSON, ET AL. T/A ROBERTSON
PRODUCTSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2792. Complaint, Feb. 20, 1976—Decision, Feb. 20, 1976

Consent order requiring a Texarkana, Ark., manufacturer and door-to-door seller of cleaning products, among other things to cease using exaggerated earnings claims; misrepresenting the terms and conditions of employment; failing to disclose full job particulars prior to hiring sales agents; fining or using threats or physical force on them; and making false and unsubstantiated claims for their products or services. The order further requires that eligible consumers be given three days to cancel their contracts in accordance with the F.T.C.'s Trade Regulation Rule governing door-to-door sales.

Appearances

For the Commission: *Richard H. Gateley and Paul W. Turley.*
For the respondents: *Winford L. Dunn, Jr.,* Texarkana, Ark.

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 Bill J. Robertson and Patricia M. Robertson individuals trading and doing business as Robertson Products, hereinafter sometimes referred to as respondents, have violated the provisions of said Act and, it appearing to the Commission that the proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Bill J. Robertson and Patricia M. Robertson, are individuals trading and doing business as Robertson Products, a proprietorship, with its office and principal place of business located at Route 8, Box 212, Texarkana, Arkansas.

PAR. 2. Respondents are now, and for some time have been engaged in the business of manufacturing and selling a cleaning product to the public, advertising that product and offering business opportunities through advertisements in newspapers of general circulation for persons to become associated with respondents as sales agents.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, the dissemination of advertisements in newspapers of general circulation offering

business opportunities soliciting sales agents for respondents' products. Respondents now cause, and for some time have caused, to be conducted, interviews in various States of the United States and have transported said sales agents, employees and representatives to various States in the United States in the course of their business aforesaid. By and through their product label, respondents now cause, and for some time have caused, the dissemination of advertisements and representations concerning their product in various States of the United States. Respondents now maintain, and for some time have maintained, places of business in various States of the United States other than Texas. Respondents now make, and for some time have made, substantial sales to consumers in various States of the United States. Therefore, respondents engage in, and at all times mentioned herein have engaged in, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

I

PAR. 4. Typical and illustrative of such advertisements, but not all inclusive thereof, are the following:

TRAVEL

Have openings for 5 over 18, must be free to travel California, Florida & Major US Cities. No experience necessary. Transportation furnished. average \$115-\$150 weekly in commissions. Represent Commercial Cleaning Product. Must leave this week. Call Mrs. Robertson 669-2660 for appointment 11 AM-3 PM only. Parents welcome at interview.

GIRLS TRAVEL

Have opening for 5 over 18, must be free to travel Calif., Florida and major U.S. cities. No experience necessary. On the job training. Travel expenses paid, transportation furnished. Avg. \$115-\$150 weekly and up to start. Must leave this week. Apply Mr. Robertson, Holiday Inn, 2247 E. Van Buren or call 244-9347, for appt. 10 a.m. — 6 p.m.

PAR. 5. By and through said advertisements and by means of oral or written statements made during subsequent interviews of prospective sales agents responding to such advertisements, respondents have represented and are representing, directly or by implication, that:

A. Respondents bear the cost of sales agents' meals, lodging and travel;

B. Each sales agent's weekly profits or earnings will be \$115, \$150 or various other stated amounts;

C. Sales agents receive a salary from respondents, in lieu of or in addition to any commissions earned;

D. Sales agents have adequate free time for leisure and recreation;

E. Respondents provide transportation home without cost or obligation to sales agents when said agents terminate their association with respondents.

PAR. 6. In truth and in fact:

A. Respondents do not bear the cost of sales agents' meals, lodging and travel, but to the contrary, charge all such expenses against sales agents' commissions, if any.

B. Few, if any, sales agents earn \$115,\$150 or the other stated amounts, but to the contrary, most sales agents derive insignificant profits or earnings.

C. Sales agents do not receive a salary from respondents in lieu of or in addition to any commissions earned, but to the contrary, have the right to receive nothing but commissions from sales.

D. Sales agents do not have adequate free time for leisure and recreation.

E. Respondents do not provide transportation home without cost or obligation to sales agents when said agents terminate their association with respondents.

Therefore, the representations alleged in Paragraph 5 are false, misleading and deceptive and have misled and deceived persons who, relying on said statements, have become sales agents for respondents.

II

PAR. 7. In the further course and conduct of their business as aforesaid, respondents are now engaging and for some time have engaged, in unfair acts and practices for the purpose of increasing sales of their product, increasing profits accruing to themselves, or retaining the services of their sales agents with little regard, if any, to the best interest of their sales agents.

Pursuant to and in furtherance of one or more of said purposes, respondents have engaged in a course of conduct involving the following coercive acts, policies and practices, among others:

A. Respondents conduct frequent lengthy and repetitious sales meetings during which sales agents are harassed, embarrassed or belittled.

B. Respondents impose or threaten the imposition of monetary fines for disobeying respondents' policies such as compulsory attendance at sales meetings.

C. Threats or acts of reprisal, intimidation or physical violence against sales agents, or persons acting on behalf of sales agents, who have requested commissions earned which were due and payable or who have expressed a desire to terminate their employment with

respondents; or against sales agents who, in the opinion of respondents, demonstrate an insufficient incentive to sell respondents' product.

D. Respondents now represent, and for some time have represented, directly or by implication, that each sales agent must sell a minimum amount of product per day or per week, and to enforce compliance with this policy, respondents now cause, and for some time have caused, the use of coercive and unfair acts, policies, and practices including threats of reprisals, intimidation, and physical violence against sales agents who sell less than the minimum amount of product.

III

PAR. 8. Respondents now fail, and for some time have failed, to disburse commissions due and payable to sales agents and retain said commissions for an unreasonable period of time. In lieu of full disbursement of commissions, respondents now cause and have caused, periodic disbursements of nominal sums of money to sales agents even if such agents accumulate commissions payable in excess of that nominal sum. The respondents' failure to disburse in full commissions due and payable and the retention of same for an unreasonable period of time, as aforesaid, is an unfair act or practice.

IV

PAR. 9. In the further course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, to be conducted interviews as alleged in Paragraph 3 herein. During such interviews, respondents now engage and have engaged in a course of conduct to solicit sales agents, many of whom are inexperienced young adults, in circumstances where such prospective sales agents have not had the opportunity to seek assistance or counsel in understanding the nature, duties and responsibilities of the business opportunity being offered by respondents.

PAR. 10. The hiring of sales agents in the manner aforesaid, involving a substantial commitment by each sales agent, where prospective sales agents have not had the opportunity to seek assistance or counsel for the purpose of understanding the nature, duties and responsibilities of the business opportunity is an unfair act or practice.

V

PAR. 11. In the further course and conduct of their aforesaid business, respondents now offer and for some time have offered, business opportunities without disclosing to prospective sales agents facts concerning the probability of receiving profits or earnings from

their association with respondents. Such facts, if known to certain prospective sales agents, would be likely to affect their consideration of whether or not to become sales agents for respondents. Therefore, respondents are failing and for some time have failed to disclose material facts and such failure to disclose is a deceptive or unfair act or practice.

VI

PAR. 12. In the further course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, to be made various statements and representations to consumers concerning the efficacy and utility of respondents' product.

PAR. 13. By and through such statements and representations alleged in Paragraph 11 herein, respondents have represented and are representing, directly or by implication, that their product has been tested by the United States Government and guaranteed by some agency thereof; that said product is safe and non-toxic and that their product is an effective industrial or household cleaning agent.

PAR. 14. In truth and in fact, respondents' product has not been tested or guaranteed by the United States Government or any agency thereof.

Furthermore, at the time respondents represented that their product was safe and non-toxic and that it was an effective industrial or household cleaning agent, respondents had no reasonable basis to support said representations.

Therefore, the aforesaid acts and practices were, and are, false, deceptive, misleading or unfair.

VII

PAR. 15. In the ordinary course and conduct of their business, as aforesaid, respondents engage in door-to-door sales of consumer goods, as the terms "door-to-door sales" and "consumer goods" are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales. 16 C.F.R. § 429. (1974) (hereinafter referred to as the "Commission Rule"), duly promulgated by the Federal Trade Commission.

PAR. 16. Subsequent to June 7, 1974, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their door-to-door sales of consumer goods,

A. Now fail and have failed to furnish the buyers with a fully completed receipt of the sale in accordance with subsection (a) of the Commission Rule; and

B. Now fail and have failed to provide a NOTICE OF CANCELLATION in the form and manner provided by subsection (b) and (c) of the Commission Rule.

C. Now fail and have failed to inform each buyer orally of his right to cancel, in accordance with subsection (e) of the Commission Rule.

Therefore, respondents' aforesaid failures to comply with Section 429.1(a), (b), (c), and (e) of the Commission Rule constitute unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act and respondents have been, and are now, in substantial competition, in or affecting commerce, with corporations, firms, and individuals in the manufacturing and sale of cleaning products and in the offering of business opportunities.

PAR. 17. The use by respondents of the aforementioned unfair, misleading and deceptive statements, representations, acts, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements were, and are, true, and into the acceptance of business opportunities or into the purchase of respondents' product because of said mistaken and erroneous beliefs.

PAR. 18. The aforementioned acts and practices, as herein alleged, are causing and have caused substantial pecuniary losses to persons associated with respondents or buying respondents' product and are all to the prejudice and injury to the public and respondents' competitors and constituted and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce 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 Dallas 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 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, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Bill J. Robertson and Patricia M. Robertson are individuals trading and doing business as Robertson Products, a proprietorship, with its office and principal place of business located at Route 8, Box 212, city of Texarkana, State of Arkansas.

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

1. *Definitions*

For purposes of this order, "sales agent" shall mean any person who is employed by, represents or in any manner is associated with respondents in the sale or offering for sale of any product or service.

II.

It is ordered, That respondents Bill J. Robertson and Patricia M. Robertson, individually, and trading and doing business as Robertson Products, or under any other name or names, each of them and their successors and assigns, and respondents' agents, sales agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of cleaning products, or other products or services; or in the recruitment or retention of sales agents for said products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by any means, that:

(a) Respondents pay all, or any part of, the expenses of sales agents or any other person associated with respondents;

(b) Respondents will pay for or furnish transportation home for sales agents;

(c) Sales agents will get a certain sum of money from respondents in lieu of or in addition to any commissions earned;

(d) Attendance at any meetings held by respondents is compulsory except in accordance with Paragraph 6(e) herein;

(e) Sales agents must sell a minimum amount of product except in accordance with Paragraph 6(g) herein;

(f) Sales agents will travel on a planned itinerary to various cities or resort areas throughout the United States.

2. Fining or threatening the imposition of fines or other penalties on any sales agent or other person for any reason.

3. Misrepresenting the terms or conditions of employment, or nature of such employment, or the manner or amount of payment for such employment.

4. Representing by any means that persons selling respondents' products can or will derive any stated amount of sales, profits, or earnings therefrom.

5. Misrepresenting in any manner the past, present, or future sales, profits or earnings from the sale of respondents' products, or representing, by any means the past or present sales, profits or earnings of respondents' sales agents except that any or all of the following representations shall not be prohibited:

(a) A true statement of the average or median sales profits or earnings actually achieved by all respondents' sales agents during any stated time period.

(b) A true statement of any particular amount of sales, profits, or earnings actually achieved or exceeded by a substantial number of respondents' sales agents during any stated time period, *provided*, that it is accompanied by a clear and conspicuous disclosure (if printed, in typesize at least equal to that of the statement of sales, profits or earnings) of the percentage of the total number of sales agents who have achieved such results.

(c) An accurate representation of any range or ranges of sales, profits, or earnings actually achieved by respondents' sales agents for any stated period of time. Ranges describing yearly results shall not exceed \$4,000 (*e.g.*, \$0 — 4,000; \$2,000 — 6,000; \$4,000 — 8,000). Ranges describing monthly results shall not exceed \$350 (*e.g.*, \$0 — 350; \$350 — 700) and ranges describing results for any other time period shall not exceed an amount constituting the same percentage of \$4,000 as the time period constitutes of one year. The representation of any range or ranges of sales, profits, or earnings achieved by respondents' sales agents must include a clear and conspicuous statement (if printed, in

typesize at least equal to that of the statement of the range) of the percentage which sales agents achieving results within the range constitute of the entire number of respondents' sales agents, *provided, however*, that if the ranges employed begin with \$0 and proceed continuously upward, a statement of the number of sales agents within each range may be included in lieu of the percentage.

6. Failing to make the following disclosures to any person including sales agents or prospective sales agents prior to the time such person is employed by respondents. Said disclosures shall be given clearly and conspicuously in a single written statement which the sales agent or other person must execute and shall state:

(a) The nature of the employment being offered and a brief description of the product or services being sold.

(b) The basis of compensation and, if on a commission basis, a statement to the effect that earnings, if any, depend solely on sales made.

(c) The responsibility for paying motel, food, transportation and incidental expenses during the term of employment.

(d) The responsibility for providing transportation home for sales agents terminating their employment with respondents.

(e) The nature and extent of sales meetings, if any, held by respondents.

(f) A sales agent has three (3) days from the date of the interview to consider respondents' offer of employment. The disclosure shall state the date on which said offer was made and the date on which the offer expires.

(g) A sales agent's responsibility, if any, for selling a minimum amount of product and the consequences of failing to discharge said responsibility.

7. Employing any person prior to expiration of the three (3) day period disclosed in accordance with Paragraph 6 herein after respondents interview a prospective sales agent, *provided*, that a sales agent may waive this right if such waiver is in writing and is knowingly and voluntarily made. Such waiver shall not relieve the respondents of disclosure (f) in Paragraph 6.

8. Failing to retain executed copies of all disclosures required by Paragraph 6 of this order for a period of three (3) years after such disclosures are made except disclosures made to prospective sales agents who do not become associated with respondents. Respondents shall make accurate statistical disclosures required by Paragraph 6 and maintain records for a period of three (3) years sufficient to verify the accuracy of each disclosure.

9. Failing to maintain for a period of three (3) years after any advertisements are disseminated:

(a) Records disclosing the date or dates each advertisement was published;

(b) Records disclosing the name and address of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Copies or scripts of all of their advertisements published or disseminated by any media.

10. Using coercion, or intimidation or any similar means, including but not limited to the use or threat of use of physical force or reprisals against persons or property.

11. Failing to disburse all commissions or salaries to a sales agent upon demand of such sales agent or any other person acting on his behalf.

12. Failing to furnish a written accounting of gross commissions or salaries earned as well as itemized deductions from said earnings periodically to each sales agent but not less often than every seven (7) days. Such accounting shall be given in clear and conspicuous wording in a single written statement which the sales agent may retain. A duplicate copy thereof shall be retained by respondents.

13. Representing, by any means, that their product or any other product is tested by the United States Government or any agency thereof unless such representation has been expressly authorized in writing by the United States Government or the agency thereof that performed the test.

14. Representing, by any means, that a product is guaranteed by the United States Government or any agency thereof.

15. Representing, by any means, that their product or any product is safe and non-toxic or that their product or any product is effective as an industrial or household cleaning agent unless, at the time such representation is made, respondents have a reasonable basis for such representation, which shall consist of a competent scientific test or tests, or other similar objective materials that substantiate such representation. The results of said test or tests, the original data collected in the course thereof and a detailed description of how said test or tests were performed shall be maintained by respondents for a period of at least three (3) years from the date on which any representation is made.

16. Failing to maintain records which substantiate that any representation made regarding past or present sales, profits, or earnings is accurate. Such records shall be sufficient to substantiate the accuracy of any representation made regarding amounts earned or sold,

the number or percentage of purchasers achieving such results, the time period during which such results are achieved, and the amount of time per day, week, or month required to achieve such results.

17. *It is further ordered*, That respondents, and each of them, trading and doing business as Robertson Products or under any name or names, their successors and assigns, and respondents' agents, sales agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any door-to-door sale of consumer goods or services, as such sales are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period Rule for Door-to-Door Sales (16 C.F.R. § 429.1) (hereinafter "the Rule") do forthwith cease and desist from:

a. Failing to furnish their buyers with a fully completed copy of the contract used in door-to-door sales, as such transactions are defined in the Rule, which contains in immediate proximity to the space reserved in the contract for the signature of the buyer a summary notice of the buyer's right to cancel in substantially the same form as that required in subsection (a) of the Rule.

b. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services, a completed form in duplicate, captioned "Notice of Cancellation," which is attached to the contract and easily detachable therefrom, containing substantially the same information and statements set forth and required in subsection (b) of the Rule.

c. Failing to inform each buyer orally at the time he signs the contract or purchases the goods or services of his right to cancel as required in subsection (e) of the Rule.

d. Including in their door-to-door contracts a confession of judgment clause or waiver of the buyer's right to cancel the sale in accordance with the provisions of the Rule.

e. Engaging in any act or practice which constitutes an unfair or deceptive act or practice pursuant to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales, effective June 7, 1974, 16 C.F.R. §429.1 and any amendments thereto, a copy of which is attached hereto as Appendix A.*

III.

18. *It is further ordered*, That respondents and each of them, cease and desist from:

(a) Including in any contract or other document any waiver,

* For reasons of economy, Appendix A is not reproduced herein.

limitation or condition on the rights of a prospective sales agent under Paragraph 6 of this order, except as allowed by Paragraph 7 of this order.

(b) Misrepresenting the rights of a prospective sales agent under Paragraph 6 of this order.

(c) Making any representations or taking any action which is inconsistent with or detracts from the effectiveness of this order.

IV.

19. *It is further ordered*, That the individual respondents and each of them shall not engage in any course of conduct which contravenes the rights of sales agents to receive their commissions in accordance with Paragraph 11 herein.

20. *It is further ordered*, That any respondent, upon receipt of a complaint from any party alleging facts to indicate that this order may have been violated, refund all monies paid by such party where respondents determine after a good faith investigation that this order has been violated in connection with such party's transaction with respondents; *provided, however*, that in the event any respondent refunds money pursuant to this paragraph of the order, the sole fact of such refund shall not be admissible against that respondent in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order; *and further provided*, that this paragraph shall not be applicable to transaction in which the sale was made prior to the date this order became final.

21. *It is further ordered*, That respondents maintain documents demonstrating compliance with this order for a period not less than three (3) years and furnish any documents to the Federal Trade Commission or Commission staff members upon request.

22. *It is further ordered*, That each respondent named herein promptly notify the Commission of discontinuance of any 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.

23. *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 which they have complied with this order.

IN THE MATTER OF
FOREST CITY ENTERPRISES, INC. T/A FOREST CITY
MATERIALS COMPANY
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2793. Complaint, Feb. 20, 1976—Decision, Feb. 20, 1976

Consent order requiring a Cleveland, Ohio, seller and distributor of appliances and television sets, among other things to cease misrepresenting prices as special or reduced unless such prices are bona fide reductions from the regular selling prices; misrepresenting the duration of sales; and failing to disclose to consumers, where manufacturers have discontinued particular models, that such models are discontinued.

Appearances

For the Commission: *Melvin H. Wolovits* and *Paul K. Trause*.

For the respondent: *Albert L. Reisenfeld*, Cleveland, Ohio.

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 Forest City Enterprises, Inc., trading and doing business as Forest City Materials Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this proceeding, "discontinued model(s)" is defined as those model(s) which have been supplanted, superseded, or succeeded by a newer or later model and which no longer appear in the prevailing literature of the manufacturer of said product.

PAR. 2. Respondent Forest City Enterprises, Inc., trading and doing business as Forest City Materials Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 10800 Brookpark Rd., in the city of Cleveland, State of Ohio.

PAR. 3. Respondent is now, and for some time last past has been, engaged in the business of advertising, offering for sale, sale, and distribution of appliances and television sets to members of the purchasing public.

Complaint

87 F.T.C.

PAR. 4. In the course and conduct of its aforesaid business, respondent has disseminated and caused the dissemination of certain advertisements in commerce or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements in daily newspapers of general circulation, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of television sets and appliances by the public.

PAR. 5. In the further course and conduct of its business, and for the purpose of inducing the purchase of television sets and appliances, respondent has made, and is now making, numerous statements and representations in its advertising and promotional materials and sales presentations with respect to the prices of its products.

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

Only ONCE IN A BLUEMOON SALE!

18" Insta-Matic Color Roll-About
MOTOROLA TV
\$314 45.95 Off!

* * * * *

SALE
ZENITH CHROMACOLOR
19" Color Portable
\$348

Sale Prices In Effect Thru (Date)

* * * * *

BIG 4-DAY SALE
\$297
Gibson No-Frost 15 Cu.
Ft. Upright Freezers

* * * * *

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

(1) Television sets and appliances are being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of reductions from respondent's regular selling price.

(2) Respondent's advertised offers are made for a limited period of time.

PAR. 7. In truth and in fact:

(1) A substantial number of respondent's television sets and appliances advertised, offered for sale or sold at special or reduced prices, are not being so offered for sale or sold, since respondent's advertised specials and reduced prices and its regular selling prices are the same or substantially the same. Consequently, purchasers are not afforded significant savings from respondent's regular selling price.

(2) Respondent's advertised offers are not of a limited duration.

PAR. 8. In the further course and conduct of respondent's business, and for the purpose of inducing the purchase of television sets and appliances, a substantial number of which have been discontinued, respondent has failed and is currently failing to disclose in its advertising and floor displays which of these said products are discontinued, which is a material fact in the purchasing of said products.

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

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of television sets and appliances of the same general kind and nature as those sold by respondent.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts 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 complete, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which,

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

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

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

1. Respondent Forest City Enterprises, Inc., a corporation, trading and doing business as Forest City Materials Company, is organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 10800 Brookpark Rd., in the city of Cleveland, State of Ohio.

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

ORDER

It is ordered, that respondent Forest City Enterprises, Inc., a corporation, trading and doing business as Forest City Materials Company, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of appliances and television sets in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of terms such as "was," "sale," "off," or in any other manner, that any price for respondent's television sets and appliances is a special price or a reduction from a former price unless such price constitutes a reduction from either the established selling price at which substantial sales were made by respondent in the recent past or the price at which

the product had been offered for sale by respondent for a substantial period of time.

2. Misrepresenting the period of time during which any television set or appliance is available at a special or reduced price.

3. Representing, directly or by implication, that the sale or special price is a savings or reduction from a former price unless the respondent clearly and conspicuously discloses:

- a. The duration for which the sale or special is in effect; and
- b. The former price; or
- c. The stated dollar or percentage of reduction in price.

4. Advertising, offering for sale or selling any television set or appliance which has been discontinued by the manufacturer and which has been purchased by respondent after discontinuance unless respondent discloses clearly, conspicuously, without ambiguity, and in close proximity to said product and advertisement:

a. That said television set(s) or appliance(s) is a "discontinued model."

b. The year in which the television set(s) or appliance(s) was discontinued.

5. Advertising, or offering for sale at a special or reduced price, any television set or appliance which has been discontinued by the manufacturer and which respondent knows has been discontinued, unless respondent clearly, conspicuously, without ambiguity and in close proximity to said product discloses:

a. That said television set or appliance is a "discontinued model."

b. The year in which the television set or appliance was discontinued.

Respondent shall be deemed in compliance with paragraph five (5) of this order, without making the required disclosures therein, for a one (1) year period following the effective date of this order, where respondent prepares an ad containing a television set or appliance and subsequent to the preparation of that ad and within thirty (30) days prior to its publication, the manufacturer discontinues such television set or appliance contained therein.

For the purposes of this order, if an advertisement contains only discontinued models, the required disclosures will be deemed to be in close proximity to said models if the disclosures appear at least once on each page of the advertisement.

It is further ordered, That respondent shall maintain, for at least a three (3) year period following the effective date of this order, records which disclose the factual basis for any representation of special or sale prices for any television set or appliance.

It is further ordered, That a copy of this order be delivered to all

present and future personnel (a) engaged in a supervisory capacity in the design and creation of advertising material for respondent's television sets or appliances and (b) engaged in a management or supervisory capacity in the sale of television sets and appliances. Respondent shall secure from each said person a signed statement acknowledging receipt of this order.

It is further ordered, That respondent 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 or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

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

Complaint

IN THE MATTER OF
TEXORA INTERNATIONAL CORP., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS
LABELING ACTS

Docket C-2794. Complaint, Feb. 23, 1976—Decision, Feb. 23, 1976

Consent order requiring a New York City importer and seller of wool products, among other things to cease misrepresenting the wool and other fiber content of their fabrics; and, to notify their customers that the fabrics they have purchased were misbranded. Further, respondents are prohibited from importing wool products except upon filing a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Krakower & Weissman, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Texora International Corp., a corporation, and Max Kovner, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Texora International Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the Territory of the Virgin Islands, with its principal office and place of business located at 450 Seventh Ave., New York, New York.

Respondent Max Kovner 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.

Respondents are now, and for some time last past have been, engaged in the importation and sale of wool products including but not limited to wool fabrics.

PAR. 2. Respondents, now and for some time last past, have imported

for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain wool fabrics stamped, tagged, labeled, or otherwise identified by respondents as "50% acrylic, 25% reprocessed wool, 25% cotton" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. Respondents' wool products described in Paragraph Three above were imported by the respondents into the United States and, as particularized in said paragraph, were not stamped, tagged, labeled or otherwise identified in accordance with the provisions of the Wool Products Labeling Act of 1939. The invoices of said imported wool products required by the Tariff Act of 1930 failed to set forth the information with respect to said wool products required under the provisions of the Wool Products Labeling Act of 1939, to wit, the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers. The respondents did falsify the consignee's declaration provided for in said Tariff Act of 1930 insofar as it related to the above items of

information enumerated in this paragraph in violation of Section 8 of the Wool Products Labeling Act of 1939 and Section 5 of the Federal Trade Commission Act, as amended.

PAR. 6. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in or affecting commerce, under the Federal Trade Commission Act, as amended.

PAR. 7. Respondents are now and for some time last past have been engaged in the importation, offering for sale, sale, and distribution of wool products. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 8. Respondents in the course and conduct of their business have made statements on invoices to their customers, misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as "50% acrylic, 25% reprocessed wool, 25% cotton" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 9. In the course and conduct of their business, respondents have misrepresented to their customers the character and amount of the constituent fibers contained in their products through falsely and deceptively stamping, tagging, labeling and otherwise identifying said products.

Among such products, but not limited thereto, were fabrics labeled as "55% acrylic, 20% nylon, 20% cotton, 5% linen" whereas, in truth and in fact, such products contained substantially different fibers and amounts of fibers than represented, including wool.

PAR. 10. The acts and practices set forth in Paragraphs Eight and Nine have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged in paragraphs eight and nine were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce, within

the intent and meaning of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

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

1. Respondent Texora International Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the Territory of the Virgin Islands, with its office and principal place of business located at 450 Seventh Ave., New York, New York.

Respondent Max Kovner is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Texora International Corp., a

corporation, its successors and assigns, and its officers, and Max Kovner, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, or importing for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products.

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

It is further ordered, That respondents Texora International Corp., a corporation, its successors and assigns, and its officers, and Max Kovner, individually and as an officer of Texora International Corp., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from importing or participating in the importation of wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Texora International Corp., a corporation, and its officers, and Max Kovner, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of fabrics or other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or through stamping, tagging, labeling, advertising or in any other manner.

It is further ordered, That respondents notify, by delivery of a copy of this order by registered mail, each of their customers that purchased the wool products which gave rise to this complaint of the fact that such products were misbranded.

It is further ordered, That the individual respondent named herein promptly notify the Commission in the event of the discontinuance of

his present business or employment and his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

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

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 or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents 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 the order to cease and desist contained herein.

IN THE MATTER OF
CLOVER JEWELERS BLVD., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2795. Complaint, Feb. 23, 1976—Decision, Feb. 23, 1976

Consent order requiring a Las Vegas, Nev., seller of jewelry and small appliances, 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.

Appearances

For the Commission: *Gerald E. Wright.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Clover Jewelers Blvd., Inc., a corporation, and Michael S. Leffert and Bonnie Nolan Leffert, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 Clover Jewelers Blvd., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada with its principal office and place of business located at 3498 Maryland Pkwy., Las Vegas, Nevada.

Respondents Michael S. Leffert and Bonnie Nolan Leffert are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising and sale to the public of jewelry and small appliances.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend and for some time last past

have regularly extended consumer credit as "consumer credit" is 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 of business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, respondents have caused and are now causing customers to enter into contracts for the purchase of respondent's jewelry and small appliances. In these contracts, hereinafter referred to as "the contract" respondents have provided some, but not all, of the consumer credit cost information required by Regulation Z. Respondents do not provide these customers with any other consumer credit cost information.

PAR. 5. By and through the use of the contract referred to in Paragraph Four respondents have:

1. Failed to compute and disclose the annual percentage rate accurately to the nearest quarter of one percent in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failed to identify the method of computing any unearned portion of the finance charge in the event of a prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

3. Failed to disclose that refunds of amounts paid toward the cash price will not be made to the customer upon default as required by Section 226.8(b)(4) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid 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.

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 San Francisco 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 as amended and the Truth in Lending Act and the implementing regulation promulgated thereunder; and

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

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

1. Respondent Clover Jewelers Blvd., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business and office located at 3498 Maryland Pkwy., Las Vegas, Nevada.

Individual respondents Michael S. Leffert and Bonnie Nolan Leffert are the principal officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their business address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Clover Jewelers Blvd., Inc., a corporation, and its successors and assigns, and its officers, and Michael S. Leffert and Bonnie Nolan Leffert, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing to compute and disclose the annual percentage rate to the nearest quarter of one percent in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment as required by Section 226.8(b)(7) of Regulation Z.

3. Failing to disclose that refunds of amounts paid toward the cash price will not be made to the customer upon default as required by Section 226.8(b)(4) of Regulation Z.

4. 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 deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any sale or extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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 or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the 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 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.

Order

IN THE MATTER OF
AMREP CORPORATION*Docket 9018. Order, Feb. 24, 1976*

Commission affirms administrative law judges's denial of respondent's motion to stay proceeding.

Appearances

For the Commission: *Perry W. Winston, Jon R. Calhoun and George E. Schulman.*

For the respondent: *Solomon Friend, Theodore Schaeier and I. David Parkoff, In-house General Counsel for Amrep Corporation, N.Y. Morton M. Maneker, Proskauer, Rose, Goetz & Mendelsohn, New York City.*

ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE'S DENIAL OF
STAY

This matter is before us upon respondent's application for review of the administrative law judge's order of January 15, 1976, disposing of respondent's motion to stay this proceeding pending the trial of a criminal fraud case, *United States v. Amrep Corp.*, 75 Cr. 1023, scheduled to commence on October 5, 1976 in the United States District Court for the Southern District of New York. The law judge, after concluding that respondent's motion called chiefly for the exercise of administrative discretion and was, therefore, outside of his authority, see *Philip Morris, Inc.*, 79 F.T.C. 1023 (1971), certified the motion to the Commission with his recommendation that the motion be denied. Rules of Practice, Section 3.22(a). The law judge also ruled that, in the event that the motion should be treated as involving questions of law or judicial discretion and was, therefore, within the scope of his authority, the motion was denied. The judge granted respondent permission to take an immediate interlocutory appeal from the ruling. Rules of Practice, Section 3.23(b).¹

Since the basis of respondent's motion is that a stay is "necessary to protect respondent's right to due process and to safeguard its substantive right to defend itself" in both the criminal and administrative proceedings, Memorandum of Law in Support of Respondent's Motion to Stay Proceedings at 1, the Commission believes that the

¹ On January 15, 1976, the United States District Court for the Southern District of New York ordered a stay of the Commission proceeding after July 30, 1976, until one month after the entry of the jury's verdict in the criminal trial. On January 27, 1976, the United States Court of Appeals for the Second Circuit granted a stay of the Commission proceeding pending determination of Amrep's appeal from the portion of the district court's order permitting this proceeding to continue through July 30, 1976.

motion should be treated as involving questions of law and judicial discretion which are within the law judge's authority to decide. The Commission has also determined to permit respondent's appeal.

The Supreme Court has declared that "[i]t would stultify enforcement of federal law to require a governmental [regulatory] agency * * * to defer civil proceedings pending the outcome of a criminal trial." *United States v. Kordel*, 397 U.S. 1, 11 (1970); see also *Gordon v. Federal Deposit Insurance Corp.*, 427 F.2d 578, 580 (1970). When both civil and criminal proceedings are simultaneously pending, a stay should be granted only if it is necessary to assure that both proceedings will be fair. The Commission can find no error in the administrative law judge's conclusion that the pendency of the criminal action will not deprive respondent of a fair hearing in the instant administrative proceeding.²

The law judge reasonably found that respondent could adequately prepare its defenses in both the criminal and the administrative proceedings. The administrative complaint was issued on March 11, 1975, more than a year before the date now set by the law judge for trial (April 12, 1976). Three attorneys, Solomon H. Friend, Esq., Theodore R. Schreier, Esq., and David Parkoff, Esq., had made formal appearances for Amrep in this proceeding. Mr. Friend, Amrep's general counsel, was indicted on October 28, 1975, almost six months before the date now set for trial. The law judge twice postponed the trial date to enable Morton Maneker, Esq., the counsel appearing for Amrep on the instant motion, to familiarize himself with the case. Assuming, as respondent claims, that neither Messrs Schreier, Parkoff, or Maneker would be prepared to represent Amrep on the trial, respondent has not shown that it has been unable to retain counsel who could prepare for an April 12, 1976, trial date.³

The law judge also properly concluded that there had been an insufficient showing that the indictment of a number of Amrep's top executives would deprive Amrep of the only persons who can provide it the assistance necessary to respond to complaint counsel's discovery demands and to prepare cross-examination of complaint counsel's witnesses. Respondent argued that these executives would be unavailable to Amrep because their time must be largely devoted to preparing their own individual defenses in the criminal proceeding. Respondent also argues that these executives would be unavailable because they

² Nor does the Commission believe that the pendency of the instant proceeding will deprive Amrep or any of the individual criminal defendants of a fair trial in the criminal action.

³ The affidavit of Edward B. Winslow, Esq., asserting that three law firms declined to represent Amrep in the Commission proceeding, falls far short of showing that counsel could not have been retained after Mr. Friend's indictment, or could not now be retained, who would be willing and able to prepare for the April 12, 1976, trial date. It should be noted that even if, as respondent claims, Messrs. Schreier and Parkoff would be unable to represent Amrep as lead counsel, they would be available to assist in the preparation of Amrep's defense.

must be concerned that information they provided for use in the administrative proceeding would be construed as a waiver of their Fifth Amendment right against self-incrimination. However, respondent has not shown that there are no present or former company employees who can respond to discovery requests without the possibility of compulsory self-incrimination or who can assist respondent in preparing its defense. See *Kordel, supra*, at 9.

Finally, respondent claims that trial of this proceeding would circumvent the policy of limiting pretrial criminal discovery embodied in the Federal Rules of Criminal Procedure. A civil proceeding should be stayed, however, only upon a showing that the "government has initiated or promoted [the proceeding] for the purpose of circumventing the Federal Rules of Criminal Procedure or any constitutional right." *United States v. Simon*, 373 F.2d 649, 652 (2nd Cir.), cert. granted sub nom. *Simon v. Wharton*, 386 U.S. 1030, vacated as moot, 389 U.S. 425 (1967); see also *Kordel, supra*, at 11-12.⁴ Accordingly,

It is ordered, That the aforesaid order of the administrative law judge be, and it hereby is, affirmed.⁵

⁴ Respondent has also objected that, under the law judge's discovery schedule,

[t]he only discovery it will receive is a witness and exhibit list a month before the hearings commence. Since complaint counsel have stated that they plan to call 150 witnesses, Amrep will have a scant 30 days to try to interview these 150 people, who are presumably scattered across the country, in order to prepare for cross-examination.

This is a matter within the sound discretion of the administrative law judge. We expect that the law judge would modify the schedule upon a showing that respondent required more than 30 days to prepare for cross-examination.

⁵ Respondent's request for oral argument is denied.

Complaint

87 F.T.C.

IN THE MATTER OF

MAYFAIR SUPER MARKETS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2796. Complaint, Feb. 24, 1976—Decision, Feb. 24, 1976*

Consent order requiring a Union, N.J., chain of retail food stores trading under the name Foodtown, among other things to cease failing to have items advertised as being on sale readily available. Further, the order requires that items customarily price-marked be marked with the advertised prices; respondent provide customers with rainchecks for unavailable merchandise; and that respondent post at each store's public entrances (1) a copy of sale ads, (2) a list of those items unavailable, and (3) a notice that rainchecks will be issued.

*Appearances*For the Commission: *Myer S. Tulkoff.*For the respondent: *Ravin & Davis, Edison, 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 Mayfair Super Markets, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act (15 U.S.C. §§45;52).

PARAGRAPH 1. Respondent Mayfair Super Markets, 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 1441 Morris Ave., Union, New Jersey.

PAR. 2. Respondent has been and is now operating a chain of retail food stores in the State of New Jersey under the trade name Foodtown. In the operation of its retail food stores, respondent offers to its customers an extensive line of products, including food, as that term is defined in the Federal Trade Commission Act, groceries and other products.

Respondent is the largest member and a part owner of Twin County

Grocers, Inc., a wholesale purchasing, warehousing and distribution cooperative which provides respondent with substantial quantities of food, groceries and other products. The president of Mayfair currently heads the governing board of Twin County Grocers, Inc. Twin County Grocers, Inc. purchases food, groceries and other products from numerous suppliers and manufacturers located throughout the United States.

Respondent is also a member and part owner of Foodtown, Inc., an advertising and promotion cooperative which provides advertising services for Mayfair. Foodtown, Inc. provides respondent with the trade name Foodtown. Foodtown, Inc. contracts to have advertisements placed in newspapers of interstate circulation.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and has been causing, directly or indirectly, the aforesaid food, groceries and other products to be shipped and distributed from the aforesaid manufacturers and other sources of supply to the warehouse of Twin County Grocers, Inc. and thereafter to respondent's retail food stores located in a State other than the State of origin of such products. Respondent also causes food, groceries and other products to be shipped from suppliers directly to respondent's retail food stores located in a State other than the State of origin of such products. Respondent also disseminates or causes to be disseminated by United States mails, advertisements for the sale of food, groceries and other products.

Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in the distribution, advertising, offering for sale, and sale of the aforesaid food, groceries and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid food, groceries and other products by United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase from respondent of said products. Said advertisements list or depict the aforesaid food, groceries and other products, and also contain statements and representations concerning the price or terms at which said products are offered for sale. The aforesaid advertisements contain further direct statements and representations concerning the time periods during which the offers are in effect.

PAR. 5. Through the use of such advertisements which have been and are now being disseminated in that area of the United States served by respondent's retail food stores respondent has represented and is now representing directly or by implication, that in its retail food stores in the marketing and trading area in which said advertisements were and are being disseminated, in those stores covered by the said advertisements, throughout the effective periods of the advertised offers, the items listed or depicted in the said advertisements would be or are:

1. Readily available for sale, and
2. Readily available for sale at or below the advertised prices.

PAR. 6. In truth and in fact, in a number of respondent's retail food stores located in the aforesaid area in which the aforesaid advertisements were and are being disseminated, in stores covered by the said advertisements, at some time during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisements were or are:

1. Not readily available for sale, or
2. Not readily available for sale at or below the advertised prices.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive, and each of the said advertisements was and is misleading in material respects and constituted, and now constitutes, a "false advertisement," as that term is defined in the Federal Trade Commission Act.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale, food, groceries or other products, as aforesaid, and by failing to have in each of its stores located within the area covered by such advertisements, throughout the effective periods of the advertised offers, in quantities sufficient to meet reasonably anticipated demands, the advertised items:

1. Readily available for sale to customers, or
2. Readily available for sale at or below the advertised prices;

Respondent has been and now is engaged in unfair acts and practices.

PAR. 8. In the course and conduct of its business, and at all times referred to herein, respondent has been, and now is, in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 9. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices including the dissemination of the aforesaid "false advertisements," has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true,

and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 10. The acts and practices as aforesaid, and the dissemination by respondents of the false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors and have constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Federal Trade Commission Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices (16 C.F.R. 424), the allegations of Paragraphs One, Two, Three, Four and Eight, respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and Rules of Practice, 16 C.F.R. §1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule, was published in the *Federal Register* on November 14, 1969 (34 F.R. 18252). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions, and additions thereto.

The Commission considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notice, as prescribed by law, determined that the adoption of the trade regulation rule and statement of its basis and purpose is in the public interest, and, accordingly, promulgated the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices on May 13, 1971, effective July 12, 1971.

PAR. 12. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise being subject to the jurisdiction of Sections 5 and 12 of the Federal Trade Commission

Act are within the intent and meaning of, and are subject to, the provisions of the aforesaid Trade Regulation Rule.

PAR. 13. In connection with its aforesaid advertisements, respondent, in a substantial number of instances, has failed to comply with the aforesaid Trade Regulation Rule by offering food and grocery products or other merchandise for sale at a stated price by means of advertisements disseminated in areas served by certain of its stores which were covered by the advertisement but which did not have such products in stock and readily available for sale to customers during the effective period of the advertisement.

PAR. 14. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with the aforesaid Trade Regulation Rule by failing to make certain of the advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 15. Respondent's aforesaid violations of the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices constitute violations of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mayfair Super Markets, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1441 Morris Ave., Union, New Jersey.

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

ORDER

A. *It is ordered*, That respondent Mayfair Super Markets, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of food, groceries or other products, hereafter sometimes referred to as items, offered or sold in its retail stores in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Disseminating, or causing the dissemination, directly or indirectly of any advertisement by any means which offers any such products for sale at a stated price, unless throughout the effective period of the advertised offer at each retail store covered by the advertisement:

1. Each advertised item is readily available for sale to customers in the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is furnished on request;

2. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

3. Each advertised item is sold to customers at or below the advertised price;

4. A "raincheck" is offered to customers for each advertised item which is unavailable. Such "rainchecks" should enable the holder to purchase the item in the near future at or below the advertised price.

Unless, with respect to 1, 2, 3 and 4 above, there are clear and conspicuous disclosures in all such advertisements as to all exceptions and/or limitations or restrictions with respect to stores, products or prices otherwise included within the advertisement.

Provided, It shall constitute a defense to a charge of unavailability

under subparagraph (1) if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand but were "sold out," or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such non-delivery acted immediately to contact the media to revise the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) if revision of the advertisement was not possible, respondent immediately offered to customers on inquiry a "raincheck" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price. If respondent or any of its employees, agents, or representatives are not advised of an alleged instance of unavailability through any source including the Federal Trade Commission within three months of its occurrence, it shall be presumed that the records called for by this proviso were in the possession of respondent showing (a) or (b), and (c) *unless* clear and convincing evidence establishes the contrary.

B. *It is further ordered*, That respondent Mayfair Super Markets, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or drugs, as those terms are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by United States mails or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains any of the offers prohibited by Section A of this order;

2. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the offers prohibited by Section A of this order.

C. *It is further ordered*, That throughout each advertised sale period in each of its retail stores, respondent shall post conspicuously, at or near each doorway affording entrance to the public, notices which contain the following:

1. A copy of the advertisement.
2. The following statement:

All items advertised are readily available for sale at or below the advertised price except the following items:

Rainchecks will be gladly issued for these items which will enable you to purchase these items at or below the advertised price in the near future. If you have any questions, the store manager will be glad to assist you.

D. *It is further ordered, That:*

1. Respondent deliver a copy of this order to each of its present and future officers, agents, representatives and employees down to the level of and including department managers within stores who, directly or indirectly, have any supervisory responsibilities as to individual grocery stores of respondent:

2. Respondent shall institute a program of continuing surveillance adequate to reveal whether the business practices of each of the persons so engaged conform with this order;

3. Respondent shall submit to the Commission a detailed report every six months for a period of three years from the date this order becomes final demonstrating the effectiveness of the steps or actions taken by respondent with regard to the aforesaid surveillance program;

4. Respondent shall, for a period of three (3) years subsequent to the date of this order:

- a. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order; except that this provision shall not be construed to limit or affect in any way those records which are referred to in the proviso paragraph of Section A or any obligations imposed thereunder.

- b. Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

- c. Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives.

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

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

IN THE MATTER OF
TARRA HALL CLOTHES, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS
LABELING ACTS

Docket C-2797. Complaint, Feb. 24, 1976—Decision, Feb. 24, 1976

Consent order requiring a New York City importer of wool products and manufacturer and seller of wool clothing, among other things to cease misrepresenting the wool content of their clothing products and to notify their customers that the clothing they have purchased was misbranded. Further, the order prohibits them from importing wool products except upon filing a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Hahn, Margolies & Ryan, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tarra Hall Clothes, Inc., a corporation, and Abraham Cohen, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tarra Hall Clothes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Ave., New York, New York.

Respondent Abraham Cohen 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.

Respondents are engaged in the importation of wool products, namely wool blend fabrics, the manufacturing of said products into clothing, and the sale and distribution of said items of clothing.

PAR. 2. Respondents, now and for some time last past, have imported

for introduction into commerce, manufactured for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain items of clothing stamped, tagged, labeled, or otherwise identified by respondents as "75% wool, 25% polyester," and "80% wool, 20% polyester" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. Respondents' wool products, namely wool fabrics from which respondents manufacture the garments described in Paragraphs Three and Four above, were imported by the respondents into the United States and, as particularized in said paragraphs, were not stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Wool Products Labeling Act of 1939. The invoices of said imported wool products required by the Tariff Act of 1930, failed to set forth the information with respect to said wool products required under the provisions of the Wool Products Labeling Act of 1939, to wit, the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers. The

respondents did falsify the consignee's declaration provided for in said Tariff Act of 1930 insofar as it related to the above items of information enumerated in this paragraph, in violation of Section 8 of the Wool Products Labeling Act of 1939 and Section 5 of the Federal Trade Commission Act.

PAR. 6. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

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

1. Respondent Tarra Hall Clothes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Ave., New York, New York.

Respondent Abraham Cohen is an officer of said corporation. He

formulates, directs and controls the acts, practices and policies of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Tarra Hall Clothes, Inc., a corporation, its successors and assigns, and its officers, and Abraham Cohen, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products.

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

It is further ordered, That respondents Tarra Hall Clothes, Inc., a corporation, its successors and assigns, and its officers, and Abraham Cohen, individually and as an officer of Tarra Hall Clothes, Inc., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from:

Importing or participating in the importation of wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents notify, by registered mail, each of their customers that purchased the wool products which gave rise to this complaint of the fact that such products were misbranded.

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

employment in which he is engaged, as well as a description of his duties and responsibilities.

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

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 or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents 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 the order to cease and desist contained herein.

IN THE MATTER OF
FOX & LENKOFSKY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND FUR PRODUCTS
LABELING ACTS

Docket C-2798. Complaint, Feb. 24, 1976—Decision, Feb. 24, 1976

Consent order requiring a New York City manufacturer and distributor of fur garments, among other things to cease mislabeling and falsely invoicing its dyed fur garments as "color added;" and failing to correctly set forth on labels and invoices the information required by the Fur Products Labeling Act.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fox & Lenkofsky, Inc., a corporation, and Murray Lenkofsky and Morris Fox, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Fox & Lenkofsky, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 352 Seventh Ave., New York, New York.

Respondents Murray Lenkofsky and Morris Fox are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondents are now, and for some time last past have been, engaged in manufacturing and distributing fur garments.

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

commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce" "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder. Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was dyed when such was the fact.

PAR. 4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was color added, when in fact such fur was dyed, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was dyed when such was the fact.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid

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

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

1. Respondent Fox & Lenkofsky, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 352 Seventh Ave., New York, New York.

Respondents Murray Lenkofsky and Morris Fox are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That the respondents Fox & Lenkofsky, Inc., a corporation, its successors and assigns, and its officers, and Murray Lenkofsky and Morris Fox, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary or other device in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the transportation or distribution in commerce, of any fur, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Representing directly or by implication on a label that the fur contained in such fur product is color added when such fur is dyed.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is color added when such is dyed.

It is further ordered, That each 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 each individual respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That 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 or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

It is further ordered, That respondents 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 the order to cease and desist contained herein.