

# FEDERAL TRADE COMMISSION DECISIONS

## Findings, Opinions and Orders

IN THE MATTER OF

REVLON, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Dockets C-2868 and C-2869. Complaints, Jan. 3, 1977 — Decisions, Jan. 3,  
1977*

Consent order requiring a New York City manufacturer, seller and distributor of cosmetics and ethical drugs, and its Cincinnati, Ohio, and Chicago, Ill., subsidiaries, among other things, to cease misrepresenting the safety, efficacy and content of hair straightening products and making unsubstantiated product claims. Further, the order requires respondents to make specific warning disclosures in advertising and on package labeling and requires the destruction of all displays and packaging which does not include the appropriate warning disclosures.

### *Appearances*

For the Commission: *Sharon S. Armstrong.*

For the respondents: *Sidney S. Rosdeitcher, Paul, Weiss, Rifkind,  
Wharton & Garrison, New York City.*

### COMPLAINT AS TO REVLON, INC., DOCKET C-2868

The Federal Trade Commission, having reason to believe that Revlon, Inc. and Revlon-Realistic Professional Products, 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 Revlon, Inc. (Revlon) is a Delaware corporation with its office and principal place of business located at 767 Fifth Ave., New York, New York.

Respondent Revlon-Realistic Professional Products, Inc. (Realistic) is an Ohio corporation with its offices and principal place of business located at 3274 Beekman St., Cincinnati, Ohio.

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

PAR. 2. Respondent Revlon manufactures, advertises, offers for sale, sells and distributes cosmetics and ethical drugs. It controls the

business operations and policies of Realistic, its wholly-owned subsidiary, and is responsible for the acts and practices of Realistic.

Respondent Realistic, a wholly-owned subsidiary of respondent Revlon, manufactures, advertises, offers for sale, sells and distributes Revlon Realistic Protein Permanent Creme Relaxer (Realistic Relaxer), a cosmetic, as that term is defined in the Federal Trade Commission Act, as amended. Realistic 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 shampoo. Realistic relaxer is sold separately and in kits with shampoo. Realistic relaxer is used by professional beauticians for the purpose of straightening curly hair.

PAR. 3. Revlon, through its wholly-owned subsidiary Realistic, and Realistic, cause Realistic relaxer, when sold, to be sent from Realistic's place of business in Ohio to beauty salons and other purchasers located in various other States of the United States and the District of Columbia. Thus, Revlon and Realistic maintain a substantial course of trade in said product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, respondents disseminate and cause to be disseminated certain advertisements concerning Realistic relaxer (1) by United States mail, magazines of interstate circulation 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 Realistic 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 Realistic relaxer, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Typical and illustrative of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following:

Mild and safe.

It contains protein protectors to help prevent scalp irritation, cuticle and unnecessary hair damage.

Our exclusive Protein Formula actually helps restore lost protein and helps strengthen hair.

It has a special proteinized creme formula that achieves permanent hair relaxation and helps protect the condition of your hair.

Built in organic protein conditioning enrichens and silkens hair like never before.

PAR. 6. 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. Realistic relaxer is safe and is mild to scalp and skin.
- B. Realistic relaxer helps strengthen hair.
- C. Realistic relaxer contains protein which
  - 1. helps prevent scalp irritation; and
  - 2. helps prevent hair damage.

PAR. 7. In truth and in fact:

A. Realistic relaxer is not safe nor is it mild to scalp and skin. Sodium hydroxide, the active ingredient in Realistic relaxer, is a primary skin irritant. It is caustic to skin and breaks down the cells which form the epidermis. Realistic relaxer in some instances causes skin and scalp irritation and burns. It can also cause eye irritation and may impair vision temporarily.

B. Realistic relaxer does not strengthen hair. The sodium hydroxide in Realistic 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.

C. Realistic relaxer does not contain protein to help prevent scalp irritation or hair damage. The ingredient used is Maypon 4c, a detergent derived from protein which has been altered so that it no longer retains the chemical or physical properties of protein. Therefore, at the time the relaxer is used, it contains no protein to help prevent scalp irritation or hair damage.

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

PAR. 8. At the time the representations set forth in Paragraph Six were made, respondents had no reasonable basis from which to conclude that such representations were true. Therefore, the advertisements and representations set forth in Paragraphs Five and Six are deceptive and unfair.

PAR. 9. Respondents advertise Realistic relaxer without disclosing that:

- A. Realistic 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 potential customers who a

professional beauticians, would be likely to affect their decision to purchase Realistic relaxer for professional use. Similarly, such facts, if known to potential customers who purchase hair straightening services from professional beauticians, would be likely to affect their decision to have their hair straightened with Realistic 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, as amended, and are false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business, respondents Revlon and Realistic utilize the product name "Revlon Realistic Protein Creme Relaxer." The use of said product name has the tendency and capacity to lead potential purchasers to believe such relaxer contains protein at the time the relaxer is applied to the hair.

In truth and in fact, the ingredient used is Maypon 4c, a detergent derived from protein which has been altered so that it no longer retains the chemical or physical properties of protein. Therefore, said respondents' use of the word "protein" in their product name is deceptive and unfair.

PAR. 11. In the further course and conduct of their business, respondents offer for sale, sell and distribute Realistic 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 or permanently colored hair. If hair has been relaxed, the relaxer should be applied only to new growth, as described in the directions.

D. If the relaxer causes skin or scalp irritation, it should be rinsed out immediately and washed with a 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 and, if known to potential customers who are professional beauticians, would be likely to affect their decision to purchase Realistic relaxer for professional use. Therefore, failure to disclose said material facts on the product package is an unfair and deceptive act or practice.

PAR. 12. 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 into the purchase of substantial quantities of Realistic relaxer by reason of said erroneous and mistaken belief.

PAR. 13. In the course and conduct of their business, respondents are in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as sold by respondents.

PAR. 14. 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, as amended.

COMPLAINT AS TO DELUXOL LABORATORIES, INC.,  
DOCKET C-2869

The Federal Trade Commission, having reason to believe that Deluxol Laboratories, Inc. and Revlon, 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 Deluxol Laboratories, Inc. (Deluxol) is an Illinois corporation with its office and principal place of business located at 1130 E. 95th St., Chicago, Illinois.

Respondent Revlon, Inc. (Revlon) is a Delaware corporation with its office and principal place of business located at 767 Fifth Ave., New York, New York.

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

PAR. 2. Respondent Deluxol, a wholly-owned subsidiary of respondent Revlon, manufactures, advertises, offers for sale, sells and distributes French Perm Creme Hair Relaxer (French Perm), a cosmetic, as that term is defined in the Federal Trade Commission Act, as amended. French Perm 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 shampoo. French Perm is sold separately and in kits with

shampoo and setting lotion. French Perm is used by consumers and professional beauticians for the purpose of straightening curly hair.

Respondent Revlon manufactures, advertises, offers for sale, sells and distributes cosmetics and ethical drugs. It controls the business operations and policies of Deluxol, its wholly-owned subsidiary, and is responsible for the acts and practices of Deluxol.

PAR. 3. Revlon, through its wholly-owned subsidiary Deluxol, and Deluxol, cause French Perm, when sold, to be sent from Deluxol's place of business in Illinois to beauty salons and other purchasers located in various other States of the United States and the District of Columbia. Thus, Revlon and Deluxol maintain a substantial course of trade in said product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, respondents disseminate and cause to be disseminated certain advertisements concerning French Perm (1) by United States mail, magazines of interstate circulation 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 French Perm; (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 French Perm, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Typical and illustrative of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following:

Why has French Perm been the standard of excellence in Salon Hair Relaxers since 1962? The secret is its special *buffering ingredients* that provide three superior processing advantages. (1) Gets the right working speed for efficiency, control and confidence — not too fast, not too slow. (2) Its *buffered action* pampers the hair shaft during processing. It's blended with protein and other mellowing ingredients to leave hair feeling like *hair*: lively, soft and shining! (3) Allows exceptional patron comfort. (Hurray!)

PAR. 6. Respondents further promote the sale of French Perm through statements and representations made by various other means, including labeling. Typical and illustrative of the statements and representations made in respondents' labeling, but not all inclusive thereof, are the following:

Contains protein for superior hair condition.

You'll love its gentle "buffered action" that leaves hair lively, gleaming, easy to style.

No burn.

So gentle, needs no protective base!

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. French Perm is gentle and does not irritate or burn scalp or skin.

B. French Perm contains protein which protects hair during the relaxing process and which produces superior hair condition.

PAR. 8. In truth and in fact:

A. French Perm is not gentle, and in some instances it causes scalp and skin irritation and burns. Sodium hydroxide, the active ingredient in French Perm, is a primary skin irritant. It is caustic to skin and breaks down the cells which form the epidermis. It can also cause eye irritation and may impair vision temporarily.

B. French Perm does not contain protein which protects hair or produces superior hair condition. The ingredient used is Maypon 4c, a detergent derived from protein which has been altered so that it no longer retains the chemical or physical properties of protein. Therefore, at the time the relaxer is used, it contains no protein to protect hair or produce superior hair condition.

Furthermore, the sodium hydroxide in French Perm 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.

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

PAR. 9. At the time the representations set forth in Paragraph Seven were made, respondents had no reasonable basis from which to conclude that such representations were true. Therefore, the advertisements and representations set forth in Paragraphs Five, Six and Seven are deceptive and unfair.

PAR. 10. Respondents advertise French Perm without disclosing that:

A. French Perm 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 potential customers, would be likely to affect their decision to purchase French Perm. Similarly, such facts, if known to potential customers who purchase hair straightening services from professional beauticians, would be likely to affect their decision to have their hair straightened with French Perm.

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, as amended, and are false, misleading and deceptive.

PAR. 11. In the further course and conduct of their business, respondents offer for sale, sell and distribute French Perm 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 or permanently colored hair. If hair has been relaxed, the relaxer should be applied only to new growth, as described in the directions.

D. If the relaxer causes skin or scalp irritation, it should be rinsed out immediately and washed with a 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 and, if known to potential customers, would be likely to affect their decision to purchase French Perm. Therefore, failure to disclose said material facts on the product package is an unfair and deceptive act or practice.

PAR. 12. 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 into the purchase of substantial quantities of French Perm by reason of said erroneous and mistaken belief.

PAR. 13. In the course and conduct of their business, respondents are in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as sold by respondents.

PAR. 14. 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, 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 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 (60) days, and having duly considered comments filed 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 Revlon, Inc. (Revlon) is a Delaware corporation with its office and principal place of business located at 767 Fifth Ave., New York, New York.

Respondent Revlon-Realistic Professional Products, Inc. (Realistic) is an Ohio corporation with its office and principal place of business located at 3274 Beekman St., Cincinnati, Ohio.

Respondent Deluxol Laboratories, Inc. (Deluxol) is an Illinois corporation with its office and principal place of business located at 1130 E. 95th St., Chicago, Illinois.

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 Revlon, Realistic and Deluxol, 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 Revlon Realistic Protein Permanent Creme Relaxer (Realistic Relaxer), French Perm Creme Hair Relaxer (French Perm relaxer) or any hair care product in or affecting commerce, as "commerce" is 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 comfortable, gentle or safe.
2. Any hair straightening product is mild, *provided, however,* that respondents may use the words "mild strength" or "mild formula" to designate those hair straightening products which contain a smaller percentage of the active ingredient or ingredients than other hair straightening products manufactured by respondents.
3. Any hair straightening product helps improve hair strength.
4. Any hair straightening product conditions or helps condition hair or improves the condition of hair, *provided, however,* that respondents may represent that such products make or help make hair more manageable, if at the time the representation is made, respondents have in their possession a reasonable basis, consisting of competent and reliable controlled tests, to support such representations.
5. Any hair care product contains protein, unless, at the time the representation is made, respondents have a reasonable basis, consisting of competent and reliable controlled tests, to establish that at the time it is used, such product contains protein or partially hydrolyzed animal or vegetable protein having at least a mean molecular weight of 1000. This definition does not include any derivative of protein or partially hydrolyzed animal or vegetable protein obtained through the condensation reaction process of protein or partially hydrolyzed animal or vegetable protein with other chemicals.

B. Representing, in any manner, directly or by implication, the efficacy of any hair straightening product 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. Representing, in any manner, directly or by implication, the safety of any hair care product 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. For purposes of this provision, failure to disclose facts shall not constitute a representation.

D. Disseminating or causing to be disseminated any advertisement of Realistic relaxer, French Perm relaxer, or any hair straightening product of similar composition, 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.”

## II

*It is further ordered,* That respondents Revlon, Realistic, and Deluxol, 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 Realistic relaxer, French Perm relaxer, or any hair care product, 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, as amended, 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, as amended, any advertisement which contains a represen-

tation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

## III

*It is further ordered,* That respondents Revlon, Realistic, and Deluxol, 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 offering for sale, sale, or distribution of Realistic relaxer, French Perm relaxer, or any hair straightening product of similar composition 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 the information panel of the 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 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 hair. Do not use on permanently colored hair which is breaking, splitting or otherwise damaged. For hair that has been permanently colored and shows no sign of damage, use only mild strength formula.
  4. If you have previously relaxed your hair, relax only the new growth, as described in the directions.
  5. If the relaxer causes skin or scalp irritation, rinse out immediately and wash with the shampoo in the kit. If irritation persists or if hair loss occurs, consult a physician.
  6. If the relaxer gets into eyes, rinse immediately and consult a physician.

*Provided, however,* that if such hair straightening product is offered for sale, sold or distributed without a neutralizing shampoo, respondents will disclose the following in place of Warning No. 5 above:

5. If the relaxer causes skin or scalp irritation, rinse out immediately and wash with a non-alkaline shampoo (pH below 7). If irritation persists, or if hair loss occurs, consult a physician.

## IV

*It is further ordered,* That respondents Revlon, Realistic, and Deluxol shall cease and desist from using the work "protein" in the trade name Revlon Realistic Protein Creme Relaxer and the trade names of any hair care product, unless at the time the representation

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## Decision and Order

is made, respondents have a reasonable basis, consisting of competent and reliable controlled tests, to establish that at the time it is used, such product contains protein or partially hydrolyzed animal or vegetable protein having at least a mean molecular weight of 1000. This definition does not include any derivative of protein or partially hydrolyzed animal or vegetable protein obtained through the condensation reaction process of protein or partially hydrolyzed animal or vegetable protein with other chemicals.

V

*It is further ordered,* That respondents shall instruct each customer to whom they sell Realistic relaxer or French Perm relaxer, to destroy all display advertisements for Realistic relaxer and French Perm relaxer which contain any of the words or representations prohibited by Paragraph I of this order or which fail to made the affirmative disclosures for such products required by Paragraph I of this order. Respondents shall also instruct each of their customers which is a wholesaler to instruct beauty salons and retail stores which may have received such display advertisements to destroy them.

VI

*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.

VII

*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.

VIII

*It is further ordered,* That 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 the corporate name or address, or any other change in the corporations which may affect compliance obligations arising out of this order.

## IX

*It is further ordered,* That the respondents herein shall, within 120 days after service 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  
CALIFORNIA AND HAWAIIAN SUGAR COMPANY,  
ET AL.

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

*Docket C-2858. Complaint, Jan. 6, 1977 — Decision, Jan. 6, 1977*

Consent order requiring a San Francisco, Calif., seller of granulated sugar, and its advertising agency, Foote, Cone and Belding/Honig, Inc., among other things, to cease misrepresenting or making unsubstantiated claims regarding the superiority of their products over that of competing brands.

*Appearances*

For the Commission: *Ben Aliza and Alfred Lindeman.*  
For the respondents: *George Link, Brobeck, Phlegge & Harrison, Los Angeles, Calif. and Quincy, White, Sidley & Austin, Chicago, Ill.*

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 California and Hawaiian Sugar Company, a corporation, and Foote, Cone & Belding/Honig, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent California and Hawaiian Sugar Company 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 1 California St., San Francisco, California.

PAR. 2. Respondent Foote, Cone & Belding/Honig, Inc. 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 55 Francisco St., San Francisco, California.

PAR. 3. Respondent California and Hawaiian Sugar Company is now, and for some time last past has been, engaged in the manufacture, sale and distribution of refined sugars which come within the classification of a "food," as said term is defined in the Federal Trade

Commission Act. Its refined sugars are usually sold for household use under the "C&H" brand.

PAR. 4. Respondent Foote, Cone & Belding/Honig, Inc. is now, and for some time last past has been, the advertising agency of California and Hawaiian Sugar Company, and now and for some time last past, has prepared and placed for dissemination and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of California and Hawaiian Sugar Company's refined sugars, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent California and Hawaiian Sugar Company causes the said products, when sold, to be transported from its place of business in one State of the United States to purchasers located in various other States of the United States. Respondent California and Hawaiian Sugar Company maintains, and at all times mentioned herein has maintained, a course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said refined sugars by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, television and radio broadcasts transmitted by television and radio stations located in various States of the United States, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product; and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said refined sugars in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following television and radio commercials<sup>1</sup> purporting to be recorded on the scene in supermarkets:

<sup>1</sup> In the scripts of said commercials, the following abbreviations are used:

A = announcer

I = interviewer

(Continued)

## FOOTE, CONE &amp; BELDING/HONIG

RADIO COPY

CLIENT C and H Sugar Company PRO-  
GRAM  
PROD- DA Radio Interview #5 - Joyce STA/CITY  
UCT Pavlovsky  
TIME :60 DATE May 12, 1975

- A: Why do women pick *one* brand over *another*? Mrs. Joyce Pavlovsky spelled it out for us in this supermarket interview. . . .
- I: You picked C and H Sugar and I'm curious: Why do you buy C and H?
- R: I buy C and H all the time because it's the finest quality sugar that I can find and this is what I want for my family.
- I: What is it about C and H that you like? What does it say for you that makes it different?
- R: Well, I know it's a pure product. Pure cane sugar from Hawaii. So I believe it and so I buy it and it's always worked well for me.
- I: To me sugar is sugar. All brands are the same.
- R: No! To me sugar isn't sugar. 'Cause I've tried other brands.
- I: Isn't this other brand pure cane sugar from Hawaii?
- R: I don't know because I don't think it says it. And this says it! And I believe it because they wouldn't be allowed to put it on the package unless it were so. Pure cane sugar. So I buy C and H.
- I: If you want pure cane sugar from Hawaii, you're sure of getting it with C and H. It says so. . . .
- R: On the package!

## FOOTE, CONE &amp; BELDING/HONIG

RADIO COPY

CLIENT C and H Sugar Company PRO-  
GRAM  
PROD- DA Radio Interview #3 - STA/CITY  
UCT Joanne Wickley  
TIME :60 DATE 5/12/75

- A: Does the information on food labels really influence women? Mrs. Joanne Wickley feels pretty strongly about it, as this supermarket interview will show you. . . .
- I: You picked C and H Sugar. My question is "why?"
- R: Well, you know that it's pure cane sugar. Says so right on the package.
- I: Aren't all sugars the same? I mean, really, sugar is sugar. Now, there's other brands on the shelf. I mean, isn't that pure cane sugar from Hawaii?
- R: I don't know. It doesn't say that on there.
- I: And what about C and H? What does that do that makes it different?
- R: It tells us where it's from. It tells us that it's pure cane sugar.
- I: And really, this impresses you?

R = respondent-consumer  
DA = devil's advocate

Complaint

89 F.T.C.

R: Yes! People read labels these days. They like to know what's in it, where it comes from and we can depend upon it's . . . what it says right here.

I: And you're honestly telling me that there is a difference between brands of sugar?

R: There really is.

I: If you want pure cane sugar from Hawaii, you're sure of getting it with C and H.

R: Right.

FOOTE, CONE &amp; BELDING/HONIG

TV SCRIPT

CLIENT	C and H Sugar Company	TIME	:30
PROD.	Pure Cane Sugar	DATE	June 23, 1975
UCT			
SPOT	"PACKAGE INFO"	Final - Short form - legal	
NO.			

- |   |  |
|---|--|
| <p>1. MAN WITH SHOPPING CART FULL OF PACKAGES (NO BRAND NAMES). HE WHEELS DOWN AISLE TOWARD CAMERA, STOPS AT SUGAR SECTION.</p> <p>2. CU. HE TAKES GENERIC PACKAGE FROM SHELF. TURNS IT OVER AND OVER IN HIS HAND, LOOKING FOR SOMETHING ON THE LABEL.</p> <p>3. HE SHAKES HIS HEAD IN RESIGNATION, SHRUGS AND PUTS PACKAGE BACK.</p> <p>4. HE TAKES DOWN A C AND H PACKAGE.</p> <p>5. SHOW CU LABEL WITH WORDS "PURE CANE SUGAR" AND "HAWAII."</p> <p>6. MEDIUM. HOLDS C AND H PACKAGE. THEN ANOTHER CU OF PACKAGE.</p> <p>7. IN TO CU OF C AND H.</p> | <p>(SILENT, EXCEPT POSSIBLY FOR MUTED STORE SOUNDS.)</p> <p>ON CAMERA ANNOUNCER (TO HIMSELF, IN A RATHER DRY, WRY, FLAT VOICE.)</p> <p>It doesn't say. It just doesn't say. (TO VIEWER) Did you ever notice, many sugar packages don't tell you <i>what</i> the sugar is made from. They just say "granulated." On the other hand - most people who make cane sugar - like C and H - proudly. . . put the word "cane" on every label. Besides that . . . they tell you <i>where</i> it comes from. Hawaii.</p> <p>So, if you want pure cane sugar from Hawaii, you can be <i>sure</i> you're getting it with C and H.</p> <p>Says so right on the label.</p> |
|---|--|

PAR. 8. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented, directly and by implication, that:

1. There are differences in granulated sugars.
2. C&H brand granulated sugar derived from Hawaiian sugar cane is different from and superior to other granulated sugars in quality and purity.

In making said representations, respondents have failed to specify any consumer use of said sugar with respect to which C&H brand sugar is significantly different from or superior to other sugar.

PAR. 9. In truth and in fact, with respect to the uses for which consumers generally purchase such sugar:

1. There are no differences in granulated sugars. They are all 99.9 percent sucrose,  $C_{12}H_{22}O_{11}$ , a carbohydrate.
2. C&H brand granulated sugar derived from Hawaiian sugar cane is not different from or superior to other granulated sugars in quality or purity.

Therefore, the advertisements referred to in Paragraph Seven were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations set forth in Paragraphs Seven and Eight were, and are, false, misleading and deceptive.

PAR. 10. In certain commercials, disseminated as aforesaid, respondents have represented, directly and by implication, that certain brands of sugar other than C&H do not disclose what their sugar is made from or where it comes from, and that such nondisclosure is a material fact which implies such competitive brands come from an inferior source of sugar. In truth and in fact, with respect to the uses for which consumers generally purchase such sugar, it is not a material fact that competitive brands of sugar do not disclose what their sugar is made from or where it comes from, and such nondisclosure does not imply that such competitive brands come from an inferior source of sugar. For consumer uses, all granulated sugars are substantially the same regardless of sugar source. They are all 99.9 percent sucrose,  $C_{12}H_{22}O_{11}$ , a carbohydrate.

Therefore, the advertisements referred to in Paragraph Seven were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements, representations and practices set forth in Paragraphs Seven and Ten were, and are, false, misleading and deceptive to consumers, and unfair acts and practices to competitors.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent California and Hawaiian Sugar Company has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of food products of the same general kind and nature as that sold by respondent.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Foote, Cone & Belding/Honig, Inc. has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 13. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent California and Hawaiian Sugar Company's refined sugars by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," 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 and deceptive acts and 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, 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 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; 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 California and Hawaiian Sugar Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1 California St., San Francisco, California.

Respondent Foote, Cone & Belding/Honig, Inc. 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 55 Francisco St., San Francisco, California.

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 California and Hawaiian Sugar Company, a corporation, and Foote, Cone & Belding/Honig, Inc., a corporation, 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 granulated sugar packaged for retail consumption, forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement by means of the United States mail or in or having an effect upon commerce by any means, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication:

(A) (i) That there are differences in granulated sugars, or that C&H granulated sugar derived from Hawaiian sugar cane is superior to or different from sugar derived from sugar beets or sugar cane from places other than Hawaii, unless (a) such represented difference or superiority relates to a consumer use of such sugar which is specified in the advertisement, (b) the difference or superiority is substantiated by competent and reliable evidence prior to making the representation, and (c) such substantiation includes competent and reliable evidence that the difference or superiority is discernible to or of benefit to the class of consumers to whom the representation is directed.

(ii) *Provided, however,* that it shall not be a violation of this order to use the phrase "pure cane sugar from Hawaii" as a means of identifying the geographic origin and type of granulated sugar marketed under the C&H brand name in any context wherein the quality of the sugar marketed under the C&H brand is not expressly or implicitly compared with the quality of any other sugar. Where an

advertisement contains the phrase "pure cane sugar from Hawaii" and a depiction of C&H sugar, without any representation referring to any competitor's sugar product, or any representation that C&H sugar possesses a depicted characteristic or quality to a degree different from competitive brands of sugar, the advertisement will not be deemed to contain an implied comparison.

(iii) *It is further provided*, that if an advertisement makes a positive or absolute and truthful representation concerning C&H sugar without any representation concerning any competitor's sugar product, or without any representation that C&H sugar possesses a depicted characteristic or quality to a degree different from competitors' brands of sugar, the advertisement will not be deemed to contain an implied comparison under this order.

(B) That the label, advertising or packaging of any brand of granulated sugar other than C&H does not disclose the source or origin of its sugar, unless the advertisement specifies a consumer use of sugar with respect to which C&H sugar is different from such other sugar and such difference is substantiated by competent and reliable evidence prior to making the representation.

2. Disseminating, or causing the dissemination of, any advertisement 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, which contains any of the representations prohibited in Paragraph 1 above.

*Provided, however*, that it shall not be considered a violation of this order for Foote, Cone & Belding/Honig, Inc. to make what would otherwise be a false or misleading claim or representation concerning the qualities of C&H sugars or competitive sugars if that respondent shows that it neither had any knowledge of the falsity of or misleading character of such representation nor had any reason to know, nor upon reasonable inquiry could have known its false, deceptive or misleading nature.

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

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

*It is further ordered*, That the respondents herein shall within sixty

(60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

## SALOMON/NORTH AMERICA, INC.

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

*Docket C-2859. Complaint, Jan. 6, 1977 — Decision, Jan. 6, 1977*

Consent order requiring a Peabody, Mass., manufacturer and distributor of ski bindings and related ski equipment, among other things, to cease establishing and maintaining resale prices; soliciting the identities of dealers failing to observe respondent's sales policy; threatening the termination of those dealerships; and restricting product sales only to authorized dealers. Additionally, the order requires respondent to indicate on each page of disseminated material containing retail prices, that these prices are suggested or approximate; and to maintain a five-year file containing correspondence and explanations of refusals to deal.

*Appearances*

For the Commission: *David W. DiNardi.*

For the respondent: *Blair L. Perry and John H. Morton, Hale & Dorr, Boston, Mass.*

## 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 Salomon/North America, Inc., a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Salomon/North America, 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 7 Dearborn Road, Peabody, Massachusetts.

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

PAR. 3. In the course and conduct of its business as aforesaid,

respondent has been and is now engaged in commerce or its acts and practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in that respondent has sold and caused and now causes said products to be shipped from the state in which they are manufactured or warehoused to other states of the United States for resale and distribution through authorized dealers to the general public.

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

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

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

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

(c) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated;

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

(e) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices; and

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

PAR. 6. By means of such acts and practices, including but not limited to the foregoing, respondent, in combination, agreement, or arrangement with certain of its authorized dealers and with the

acquiescence of other authorized dealers, has established, maintained and pursued a planned course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 7. The aforementioned acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and constitute unfair methods of competition in or affecting commerce, all in derogation of the public interest and 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 Boston 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, its attorneys, 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, 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 Salomon/North America, Inc. (Salomon), 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 at 7 Dearborn Road, Peabody, Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

## I

*It is ordered.* That Salomon/North America, Inc., a corporation (hereafter Salomon), its subsidiaries, successors and assigns, and its officers and directors and Salomon's agents, representatives and employees, individually or in concert, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, distribution, offering for sale or sale of ski bindings, ski equipment and related items or any other product (hereinafter the "Products") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Making or enforcing any oral or written contract, agreement or arrangement pursuant to which such dealer, distributor or retailer agrees not to sell the Products at prices less than minimum retail prices established by Salomon.

B. Making or enforcing any oral or written contract agreement or arrangement which restricts the class or type of customer to whom such dealer, distributor or retailer may sell the products.

C. Making or enforcing any oral or written contract, agreement or arrangement which restricts the site or location at which such dealer, distributor or retailer may sell the Products.

D. Making or enforcing any oral or written contract, agreement or arrangement which prohibits such dealer, distributor or retailer from advertising, promoting or offering for sale any of the Products at less than minimum prices specified by Salomon.

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

F. Publishing, disseminating or circulating any pricelist, price book, price tag, advertising or promotional material, or other document ("Promotional Material") indicating any resale or retail prices for the Products without stating on each page of such Promotional Material which includes a list or statement of the suggested retail prices of any or all of the Products that the price is a suggested or an approximate retail price.

## II

Nothing contained in this order shall be construed as limiting or restricting the rights of Salomon (a) to require that each dealer or retailer who sells the Products at retail shall be fully qualified to perform Proper Fitting Services (as that term is hereafter defined); and (b) to require that each dealer or retailer who sells the Products at retail actually shall provide Proper Fitting Services to retail customers who purchase the Products; and (c) to require that distributors, dealers and retailers refrain from reselling the Products to dealers or retailers who are not fully qualified and willing to provide Proper Fitting Services to retail customers; *provided* that Salomon shall make available to all present and prospective dealers an opportunity for instruction in performing Proper Fitting Services, except where Salomon has lawful business reasons (other than the inability to perform Proper Fitting Services) for not selling the Products to any particular dealer. As used in this paragraph II, the term "Proper Fitting Services" means the mounting and installing of the Products upon the skis of a retail or rental customer, and the fitting and adjustment of the Products to the boots of such customer, in a workmanlike and proper manner, having due regard for the physical qualifications and skiing abilities of such customer, in order to minimize the risk of injury to such customer and other persons and property and to minimize the potential liabilities of Salomon and its distributors, dealers and retailers.

## III

*It is further ordered.* That Salomon shall, within fifty-nine (59) days after service upon it of this order, mail a copy of this order to each of its dealers in the Commonwealth of Puerto Rico, the District of Columbia and in those states which as of February 28, 1975, did not permit fair trade contracts, under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

## IV

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

