

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

OLIN SKI COMPANY, INC., ET AL.

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

Docket C-2895. Complaint, July 19, 1977 — Decision, July 19, 1977

This consent order, among other things, requires a Middletown, Conn. manufacturer and distributor of ski boots and other ski industry items to cease establishing, maintaining, and enforcing price maintenance agreements; requiring such agreements as a precondition to dealing; soliciting reports of recalcitrant distributors and terminating those dealerships; using serial numbers as a means of tracing products sold to unauthorized outlets; and failing to honor warranties for products sold by such establishments. Further, the order requires the respondents to maintain prescribed files for a five-year period; and prohibits them from disseminating, for two years, all materials suggesting resale prices.

Appearances

For the Commission: *David W. Dijnardi.*

For the respondents: *Allen F. Maulsby, Cravath, Swain & Moore,*
New York City.

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 Olin Ski Company, Inc., a corporation, hereinafter sometimes 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 Olin Ski Company, Inc., hereinafter referred to as respondent, 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 475 Smith St., Middletown, Connecticut.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale or distribution of skis, ski boots or other ski industry items, hereinafter referred to as said products. Said products are subse-

quently distributed and sold throughout the United States for resale to the general public through authorized dealers who have signed with respondent an Authorized Dealership Agreement (hereinafter authorized dealers).

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been engaged 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, hindered, lessened 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 in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

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

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

(b) Establishing agreements, understandings, or arrangements with its authorized dealers, one or more of whom are located in states which did not have fair trade laws, as a condition precedent to the granting of a dealership, that such authorized dealers would maintain certain resale or retail prices for said products or such dealership would be terminated; and that respondent would not honor a guaranty on said products sold by other than an authorized dealer of respondent;

(c) Requiring its authorized dealers to execute an Authorized Dealership Agreement under the terms of which such authorized dealers agree, among other things; That said products shipped to them by respondent will be sold at the retail level; and To resell to respondent any unsold stock of said products in the event that business relations between respondent and its authorized dealers are terminated;

(d) Affixing serial numbers on all skis shipped by respondent to its authorized dealers for the purpose of tracing sales of such skis by authorized dealers to unauthorized retail outlets;

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

(f) Contacting those authorized dealers who fail to adhere to and maintain certain retail or resale prices for said products and securing, or attempting to secure, assurances from such authorized dealers that they will adhere to and observe respondent's resale or retail prices;

(g) In certain instances threatening to terminate and terminating authorized dealers who fail or refuse to observe, maintain or advertise respondent's resale or retail prices for said products.

PAR. 6. By means of such acts and practices, including but not limited to the foregoing, respondent, in combination, agreement, or understanding with certain of its authorized dealers, has established, maintained and pursued a 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 commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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, which order incorporates an agreement of Olin Corporation, 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, 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 Olin Ski Company, 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 at 475 Smith St., Middletown, Connecticut.

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

ORDER

I. *It is ordered*, That respondent Olin Ski Company, Inc., a corporation, or any of its subsidiaries, divisions, successors and assigns, and its officers, and respondent's agents, representatives and employees, individually or in concert, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, manufacture, distribution, offering for sale or sale of skis, ski boots or other ski industry items (hereinafter referred to in this order as "said products") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing with any authorized dealer any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling or enforcing, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

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

C. Prior to selling to a prospective dealer, requiring a promise or assurance, whether by understanding, agreement, or otherwise, that

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such dealer will adhere to and observe any resale or retail price for any of said products.

D. Requiring from any authorized dealer a promise or assurance to adhere to any resale or retail price for any of said products as a condition precedent to any future sales to said authorized dealer.

E. Requesting or requiring, either directly or indirectly, any authorized dealer or prospective dealer to report any authorized dealer who does not adhere to any resale or retail price for any of said products.

F. Terminating or threatening, either directly or indirectly, to terminate any authorized dealer for the reason that such dealer had been reported as not adhering to or observing any resale or retail price for any of said products.

G. Terminating or threatening, either directly or indirectly, to terminate any authorized dealer because of any resale or retail price observed, maintained, or advertised by the authorized dealer for any of said products.

H. For two (2) years from the date on which this order becomes final, publishing or circulating any suggested resale or retail price for any of said products by price list, discount schedule, invoicing procedure, pre-pricing of commodities or their containers, or by any other such means, to any reseller or authorized dealer.

I. After the expiration of the time period stipulated in provision H above, publishing, disseminating or circulating to any reseller or authorized dealer any price list, price book, price tag, advertising or promotional material, or other document indicating any resale or retail price of said products unless each reference to such price is accompanied by a clear and conspicuous disclosure that the price is suggested or approximate.

J. Refusing to honor a guaranty on any of said products for the reason that said product was not sold by an authorized dealer of respondent.

K. Requiring or inducing by threats of termination any authorized dealer or prospective dealer to refrain, or to agree to refrain from reselling any of said products to any independent dealer or distributor.

L. Using serial numbers, registration numbers or other similar identifying marks on said products as a means of tracing sales of said products to particular authorized dealers where the purpose of such tracing is to terminate or threaten to terminate authorized dealers of respondent selling said products to unauthorized dealers.

M. Requiring any authorized dealer to resell to respondent any unsold stock of said products in the event that business relations

between respondent and the authorized dealer are terminated; *provided, however*, that respondent shall not be prohibited from repurchasing such unsold stock with the consent of an authorized dealer, or where respondent has a "security interest" in said products, or where the authorized dealer is unable to meet its financial obligations to respondent.

II. *It is further ordered*, That respondent shall, within fifty-nine (59) days after service upon it of this order, mail to all current authorized dealers of said products, on official stationery of respondent, together with a copy of this order, a copy of the letter signed by the President of respondent, attached hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

III. *It is further ordered*, That respondent, during the five (5) year period of time following the date of service of this order, shall furnish to all future authorized dealers of said products at the time said dealers are opened as accounts a copy of this order, together with a copy of the letter attached hereto as Exhibit A.

IV. *It is further ordered*, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and subsidiaries now engaged in the manufacture, sale and distribution of said products and to all of its officers and directors now engaged in the manufacture, sale and distribution of said products.

V. *It is further ordered*, That respondent shall, within thirty (30) days from the date of service of this order, mail or deliver, and obtain a signed receipt therefor, a copy of this order to all of its sales personnel and sales representatives then engaged in the distribution, offering for sale or sale of said products.

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

VII. *It is further ordered*, That respondent, for a period of five (5) years from the date of service of this order, maintain files of all records referring or relating to respondent's termination of any authorized dealer, which files shall contain a record of any written communication to each such dealer explaining such termination, and which files will be available for Commission inspection on reasonable notice; and, annually, for a period of five (5) years from the date of service, submit a report to the Commission listing the names and addresses of all authorized dealers whom respondent has terminated

during the preceding year, a description of the reason for the termination and the date of the termination.

VIII. *It is further ordered*, That the agreement of Olin Corporation, the parent corporation of the respondent, which agreement is in the form of an affidavit of the President of Olin Corporation, attached hereto as Exhibit B, be incorporated herewith into this order.

IX. *It is further ordered*, That respondent 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.

EXHIBIT A

(Letterhead of Olin Ski Company, Inc.)

(date)

Dear Authorized Olin Ski Dealer:

We have agreed with the Federal Trade Commission to inform you that the Federal Trade Commission has entered into a consent order with the Olin Ski Company, Inc.

Our agreement to the issuance of a consent order was for settlement purposes only and does not constitute an admission that the law has been violated by us in connection with the marketing of skis, ski boots and other ski industry items.

Subject to the provisions of the enclosed consent order:

- (1) You are free to set your own retail or resale prices for our products;
- (2) We will not solicit, invite or encourage you or any other person to report that any authorized dealer is not following any retail or resale price for any of our products, and, further, we will not act on any such reports sent to us; and
- (3) We will not require any authorized dealer to refrain from advertising our products at any price or from selling or offering our products at any price to any person.

As a result of the consent order, you are free to determine independently your own pricing policy with respect to the advertising, offering for sale and sale of our products without interference by us and without jeopardy from such determination to your status as an authorized dealer.

Very truly yours,

President

EXHIBIT B

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the Matter of

OLIN SKI COMPANY, INC.,

File No. 731 0049

a corporation

AFFIDAVIT OF
JOHN M. HENSKE

STATE OF CONNECTICUT, SS.:

COUNTY OF FAIRFIELD,

JOHN M. HENSKE, being duly sworn, deposes and says:

1. I am the President and a Director of Olin Corporation (Olin), whose wholly-owned subsidiary, Olin Ski Company, Inc., (Olin Ski), is the respondent herein.
2. Olin Ski will today execute with counsel for the Federal Trade Commission an Agreement Containing Consent Order to Cease and Desist pertaining to future marketing practices in the manufacture, sale or distribution of skis, ski boots or other ski industry items.
3. Olin will undertake to have Olin Ski fulfill all its obligations under the aforementioned agreement.
4. Olin will notify the Commission at least thirty days prior to any proposed change in Olin Ski 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.
5. In the event that Olin Ski is sold, assigned or otherwise disposed of by Olin to any other person, firm, partnership or corporation, Olin will insert in the agreement of purchase a provision specifying that the purchaser or assignee is a successor to or assignee of the obligations of Olin under the order.
6. In the event that Olin dissolves Olin Ski and/or Olin Ski discontinues the manufacture, sale or distribution of skis, ski boots or other ski industry items, and if Olin at any time in the future manufactures, sells or distributes skis, ski boots or other ski industry items, Olin will become a successor to or assignee of the obligations of Olin Ski under the order.

/s/JOHN M. HENSKE

Sworn to before me this
19th day of April 1976.
/s/Pauline E. Altieri
Notary Public
My Commission Expires April 1, 1981

IN THE MATTER OF

CBS INC.

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

Docket C-2896. Complaint, July 21, 1977 -- Decision, July 21, 1977

This consent order requires a New York publishing firm to cease mailing and billing for unauthorized magazines; sending collection letters to receivers of unordered magazines; misrepresenting the effects of nonpayment on credit ratings in such letters; and transferring unpaid accounts to recipients of unsolicited magazines to debt collection or consumer reporting agencies. Further, the order requires respondent to make proper restitution to individuals who paid for unordered magazines; and to send correction letters to consumers whose credit standings may have been adversely affected by respondent's actions. Additionally, respondent is required to maintain prescribed records; and to institute an adequate program of continued surveillance to ensure conformance with the terms of the order.

Appearances

For the Commission: *Paul P. Eyre and John M. Mendenhall.*

For the respondent: *Edward Kelman and Jerry Ebenstein, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that CBS 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent CBS 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 51 West 52nd St., New York, New York. Respondent conducts its publishing of magazines through its CBS Consumer Publishing Division of the CBS Publishing Group, located at 600 Third Ave., New York, New York.

PAR. 2. Respondent, through its CBS Consumer Publishing Division, is now, and has been, engaged in the business of publishing, distributing, offering for sale, and selling various types of magazines.

PAR. 3. In the course and conduct of its magazine business, through

its CBS Consumer Publishing Division, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In late 1974 and early 1975, respondent, in the course and conduct of its magazine business through the CBS Consumer Publishing Division, in connection with the publishing, distributing, offering for sale, or selling of *Field & Stream* magazine:

(a) Ran a sweepstakes promotion in conjunction with a subscription campaign for *Field & Stream* magazine. In order to enter the sweepstakes, consumers were requested to sign an entry card and check a box to indicate whether the consumer wanted only to enter the sweepstakes or to also subscribe to *Field & Stream*. A number of people returning the card did not check either box. Respondent, through the CBS Consumer Publishing Division, sent copies of *Field & Stream* magazine to consumers who did not check either box, as well as those who checked the subscription box.

(b) Has mailed, or caused to be mailed, to persons who received such magazines without having checked either box, a bill for such magazines.

(c) Has mailed, or caused to be mailed, persistent demands for payment to persons who received such magazines without having checked either box.

Pursuant to the Postal Reorganization Act, Section 2, 39 U.S.C. 3009 (1970), the aforesaid acts and practices of respondent's CBS Consumer Publishing Division constituted a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business, and in connection with the publishing, distributing, offering for sale, or selling of *Field & Stream* magazine, respondent, through its CBS Consumer Publishing Division, transferred, or caused to be transferred, the purportedly due or delinquent accounts of those consumers who received copies of *Field & Stream* magazine and who did not indicate on the sweepstakes entry card whether they desired the magazine subscription to a debt collection agency or consumer reporting agency, for the purpose of collecting the subscription price for such magazines or for the purpose of including information in the consumer files of said agencies.

The aforesaid acts and practices constituted a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 6. Respondent, through its CBS Consumer Publishing Division, has used the acts and practices set forth in Paragraphs Four and Five, to induce persons who received copies of *Field & Stream*

magazine without having checked either box to pay the subscription price for such magazine. Respondent's CBS Consumer Publishing Division has received the said sums from some of such persons, and has failed to offer refunds, or refund such sums to said persons.

The use by respondent, through its CBS Consumer Publishing Division, of the aforesaid acts and practices constituted, and respondent's continued retention of said sums of money as aforesaid constitutes, a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 7. Respondent, in the course and conduct of its business, through its CBS Consumer Publishing Division, for the purpose of inducing consumers to pay due or delinquent accounts, has transmitted, or has caused to be transmitted, to consumers, form letters demanding payment, representing that:

(a) If the consumer does not respond to a collection letter within a specified period of time, such consumer's account will be transferred to a consumer credit reporting agency for immediate inclusion in a national bad debt file;

(b) A consumer's account has been transferred to a credit collection manager of respondent's credit collection department.

PAR. 8. In truth and in fact:

(a) The failure of a consumer to respond to a collection letter within a specified period of time did not automatically result in the transferral of such consumer's account to a consumer credit reporting agency for immediate inclusion in a national bad debt file;

(b) The consumer's account was not transferred to a credit collection manager of respondent's collection department.

Therefore, the representations set forth in Paragraph Seven hereof were false, and had the tendency and capacity to mislead members of the public, and to induce the payment of delinquent accounts.

PAR. 9. In the course and conduct of its magazine business through its CBS Consumer Publishing Division, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the similar business of publishing, distributing, offering for sale, and selling magazines.

PAR. 10. The aforesaid acts and practices of respondent, through its CBS Consumer Publishing Division, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted unfair methods of competition 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 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 CBS 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 51 West 52nd St., in the City of New York, State of New York, and one of its components is the CBS Publishing Group.

CBS Consumer Publishing Division, a division of the CBS Publishing Group, with its principal office and place of business located at 600 Third Ave., New York, New York, is engaged in the manufacture, distribution, and sale of consumer publications, including magazines.

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

ORDER

I

It is ordered, That respondent CBS Inc., a corporation, its succes-

sors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the advertising, publishing, distributing, offering for sale, or selling of magazines in commerce or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Mailing, or causing to be mailed, magazines without the prior expressed request or consent of the recipient.

B. Mailing, or causing to be mailed, a bill to recipients of magazines mailed without the recipient's prior expressed request or consent.

C. Mailing, or causing to be mailed, collection letters to recipients of magazines mailed without the recipient's prior expressed request or consent.

D. Transferring, or causing to be transferred, the alleged delinquent accounts of recipients of magazines mailed without the recipient's prior expressed request or consent, to a debt collection or consumer reporting agency.

Provided, that respondent may act in accordance with the exceptions extended by the Postal Reorganization Act, Section 2, 39 U.S.C. 3009 (1970), as amended or modified.

II

It is further ordered, That respondent CBS Inc., a corporation, its successors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the collection of consumer debts in commerce or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Using any forms, letters, or materials which represent directly or indirectly, by any means, that where payment due from a consumer in purported receipt of magazines is not received, the information of said delinquency is referred to a debt collection or consumer reporting agency, unless such agency is notified as represented.

B. Misrepresenting, by any means, the manner, extent, and consequences of the referral of debt delinquency information, compiled as a result of the purported receipt of magazines, to debt collection or consumer reporting departments or agencies.

C. Misrepresenting, by any means, that failure to pay the alleged

debt or delinquency, as a result of the purported receipt of magazines, will result in the consumer's credit rating being adversely affected.

D. Misrepresenting, in any manner, the names, roles, functions, relationship to respondent, or titles of individuals who are engaged in the collection of money purportedly due and payable as a result of the purported receipt of magazines, or who transfer information regarding particular consumers to debt collection or consumer reporting departments or agencies as a result of money purportedly due and payable as a result of the purported receipt of magazines.

III

It is further ordered, That:

A. Respondent deliver a copy of this order to each of its present and future operating groups, magazine publishers, and employees directly responsible for magazine circulation marketing activities, and to each of its present and future independent contractors engaged in magazine subscription fulfillment activities or magazine subscription advertising activities.

B. Respondent, through its CBS Consumer Publishing Division, institute a program of continuing surveillance adequate to reveal whether the business practices of individuals or entities described in Section III, paragraph A, conform to the requirements of this order.

C. Respondent, through its CBS Consumer Publishing Division, maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for inspection and copying by the Federal Trade Commission or its staff upon request.

IV

It is further ordered, That:

A. Respondent CBS Inc., through its CBS Consumer Publishing Division, shall offer a choice, at the option of the consumer, of full restitution (\$2.98) or a free one (1) year subscription to *Field & Stream* magazine to any consumer who paid in full for an unordered subscription to *Field & Stream* magazine in connection with the *Field & Stream* Sweepstakes/Subscription promotion conducted in late 1974 and early 1975, after the receipt by such consumer of the letter signed by Ken Edwards or Vince Dema, which letter stated in part:

Dear Friend,

When you sent us your FIELD & STREAM subscription order I accepted it in good faith, and billed you as you requested.

Since that time I've sent you three action-packed issues of FIELD & STREAM, but have not received your payment. You are long overdue. . . .

This offer of full restitution or a free one (1) year subscription shall be made in the following manner:

(1) Within thirty (30) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall identify all consumers described in Section IV, paragraph A.

(2) Within sixty (60) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall notify in writing by first-class, post-paid mail, all consumers identified in Section IV, paragraph A(1), at their last known addresses, of their right to restitution in the language, manner, and form shown in Appendix A.

(3) The letter set forth in Appendix A shall request a response to respondent's offer by a certain date. Such date shall be at least one hundred twenty (120) days after the date this order becomes final. Any response to such offer postmarked after such date shall be null and void.

(4) Within one hundred fifty (150) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, will, in accordance with consumers' replies to Appendix A, either refund, by first-class, post-paid mail, all monies paid by consumers identified in Section IV, paragraph A(1), or initiate, in accordance with the terms of said letter, a free one (1) year subscription to *Field & Stream* magazine on behalf of said consumer.

(5) Within two hundred ten (210) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, will provide to the Commission the following information:

(a) A list of the consumers identified pursuant to Section IV, paragraph A(1), of this agreement.

(b) A list of the consumers to whom letters were sent pursuant to Section IV, paragraph A(2), and which were returned by the United States Postal Service to respondent's CBS Consumer Publishing Division, having been undelivered to consumers.

(c) A list of the consumers who do not return Appendix A or otherwise respond to Appendix A within the time period allowed for such response.

(d) A list of the consumers who elect to receive full two dollars and ninety-eight cents (\$2.98) restitution under the terms of the offer extended by Appendix A.

(e) A list of the consumers who elect to receive a free one (1) year subscription to *Field & Stream* magazine under the terms of the offer extended by Appendix A.

B. Respondent, through its CBS Consumer Publishing Division, shall retain in its files for a period of three (3) years after the date that this order becomes final:

(1) All letters and their respective envelopes sent pursuant to Section IV, paragraph A(2), which are returned to respondent's CBS Consumer Publishing Division by the United States Postal Service as undeliverable.

(2) All letters (including those specified by Appendix A) sent to respondent's CBS Consumer Publishing Division by consumers in response to the offer extended by respondent's CBS Consumer Publishing Division pursuant to Section IV, paragraph A.

V

It is further ordered, That, within thirty (30) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall notify in writing, by first-class mail, in the language, manner, and form shown in Appendix B, those consumers whose names were forwarded by it in respect of *Field & Stream* magazine to Credit Index, a division of Hooper-Holmes.

VI

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

APPENDIX A

DATE

Name, Address, City, State, ZIP Code.

Re: 1975 World of Leisure Sweepstakes- Field & Stream Magazine.

Dear _____:

Last year, we entered a subscription in your name to *Field & Stream* magazine. If you are dissatisfied with the entry of this subscription and your payment therefor, we would like to make you the following offer:

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A cash refund of \$2.98 paid; or

A free one-year subscription to *Field & Stream* magazine (newsstand value of \$12.00) to begin at once or added at the end of your current subscription.

Please indicate, by checking one box only, which of the above alternatives you desire.

In order to take advantage of this offer, this letter must be postmarked by (*date*). We have enclosed a business reply envelope for your convenience.

Looking forward to hearing from you.

Very truly yours,

CBS Consumer Publishing.

By: _____

APPENDIX B

DATE

Name, Address, City, State, ZIP Code.

Re: 1975 World of Leisure Sweepstakes- Field & Stream Magazine.

Dear _____:

Due to a confusion with respect to an incompletely filled-out sweepstakes entry form/subscription order form, and the resultant billing to you with respect to copies of *Field & Stream* magazine, we referred your name to a direct-mail bad pay file with a consumer credit reporting agency.

Please be advised that we have caused your name to be removed from said file permanently.

By law (Fair Credit Reporting Act), all debt collection agencies or consumer credit reporting agencies must delete information with regard to this misunderstanding upon presentation of this letter.

Please excuse this misunderstanding, and accept our apology.

Very truly yours,

CBS CONSUMER PUBLISHING.

By: _____

Complaint

90 F.T.C.

IN THE MATTER OF
CENTRAL CALIFORNIA LETTUCE PRODUCERS
COOPERATIVE, ET AL.

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

Docket 8970. Complaint, June 10, 1974 — Final Order, July 25, 1977

This order dismisses a complaint issued against a Salinas, Calif. nonprofit cooperative and 22 of its members for alleged price-fixing practices in the lettuce market, violative of antitrust law. The Commission ruled that the price-fixing practices were exempt from the antitrust laws, under the Capper-Volstead Act, which permits producers of agricultural products to "act together in association . . . in collectively . . . marketing" their products.

Appearances

For the Commission: *Carl J. Batter, Jr. and David B. Loken.*

For the respondents: *Philip C. Olsson and James F. Rill, Collier, Shannon, Rill & Edwards, Washington, D.C., Andrew Church, Abramson, Church & Stave, Salinas, California and Max Thelen Jr., Thelen, Marrin, Johnson & Bridges, San Francisco, California.*

COMPLAINT

[2] Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C. 41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties listed in the caption hereof, and more particularly described and referred to hereinafter, have violated the provisions of Section 5 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 Central California Lettuce Producers Cooperative (hereafter "Central") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Central maintains its home office and principal place of business at 512 Pajaro St., Salinas, California. [3]

PAR. 2. Respondent Admiral Packing Co. (hereafter "Admiral") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Admiral maintains its home office and principal place of business at 495 Brunken Ave., P.O. Box 1089, Salinas, California.

PAR. 3. Albert C. Hansen is an individual doing business as Hansen

Farms (hereafter "Hansen"). Hansen maintains its home office and principal place of business at 1941 Alisal Rd., P.O. Box 269, Salinas, California.

PAR. 4. Respondent California Coastal Farms, Inc. (hereafter "Coastal") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Coastal maintains its home office and principal place of business at 1140 Abbott St., P.O. Box 811, Salinas, California.

PAR. 5. Respondent Carl Joseph Maggio Inc. (hereafter "Maggio") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Maggio maintains its home office and principal place of business at South 1st St. & Lonoak Rd., P.O. Box 536, King City, California.

PAR. 6. Respondent D'Arrigo Bros. Co. of California (hereafter "D'Arrigo") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. D'Arrigo maintains its home office and principal place of business at 706 West Market St., P.O. Box 850, Salinas, California.

PAR. 7. Respondent Eckel Produce Co. (hereafter "Eckel") is a partnership organized, existing and doing business under and by virtue of the laws of the State of California. Eckel maintains its home office and principal place of business at 740 Airport Blvd., P.O. Box 1027, Salinas, California.

PAR. 8. Respondent Green Valley Produce Co-Op (hereafter "Green Valley") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Green Valley maintains its home office and principal place of business at 1148 Abbott St., P.O. Box 2123, Salinas, California. [4]

PAR. 9. Respondent Growers Exchange, Inc. (hereafter "Growers") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Growers maintains its home office and principal place of business at 740 Airport Blvd., P.O. Box 479, Salinas, California.

PAR. 10. Respondent Harden Farms of California (hereafter "Harden") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Harden maintains its home office and principal place of business at 1102 Growers St., P.O. Box 779, Salinas, California.

PAR. 11. Respondent J. R. Norton Co. (hereafter "Norton") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Norton maintains its home office and principal place of business at Front & Gabilan Sts., P.O. Box 5375, Salinas, California.

PAR. 12. Respondent Jack T. Baillie Co., Inc. (hereafter "Baillie") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Baillie maintains its home office and principal place of business at 634 South Sanborn Rd., P.O. Box 268, Salinas, California.

PAR. 13. Respondent Let-Us-Pak is a partnership organized, existing and doing business under and by virtue of the laws of the State of California. Let-Us-Pak maintains its home office and principal place of business at 740 Airport Blvd., P.O. Box 225, Salinas, California.

PAR. 14. Respondent Merit Packing Co. (hereafter "Merit") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Merit maintains its home office and principal place of business at 634 South Sanborn Rd., P.O. Box 1649, Salinas, California.

PAR. 15. Respondent Merrill Farms (hereafter "Merrill") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Merrill maintains its home office and principal place of business at 1067 Merrill St., P.O. Box 659, Salinas, California. [5]

PAR. 16. Respondent Pacific Lettuce (hereafter "Pacific") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Pacific maintains its home office and principal place of business at Rianda & Prader Sts., P.O. Box 534, Salinas, California.

PAR. 17. Respondent R. T. Englund (hereafter "Englund") is a partnership organized, existing and doing business under and by virtue of the laws of the State of California. Englund maintains its home office and principal place of business at 271 Rianda St., P. O. Box 517, Salinas, California.

PAR. 18. Respondent Royal Packing Co. (hereafter "Royal") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona. Royal maintains an office and place of business at 91 Spicer St., P.O. Box 5337, Salinas, California.

PAR. 19. Respondent Salinas Lettuce Farmers Cooperative (hereafter "Salinas Lettuce") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Salinas Lettuce maintains its home office and principal place of business at 624 South Sanborn Rd., P.O. Box 594, Salinas, California.

PAR. 20. Respondent Salinas Marketing Cooperative (hereafter "Salinas Marketing") is a corporation organized, existing and doing

business under and by virtue of the laws of the State of California. Salinas Marketing maintains its home office and principal place of business at 1222 Merrill St., P.O. Box 357, Salinas, California.

PAR. 21. Respondent The Garin Co. (hereafter "Garin") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Garin maintains its home office and principal place of business at 634 South Sanborn Rd., P.O. Box 1731, Salinas, California.

PAR. 22. Respondent United Brands Company (hereafter "United Brands") is a corporation organized, existing and doing business under and by virtue of the [6] laws of the State of New Jersey. United Brands maintains its home office and principal place of business at 245 Park Ave., New York, N.Y. United markets fresh produce, including lettuce, through a wholly-owned subsidiary, Inter Harvest, Inc. whose home office and principal place of business is located at 122 East Alisal St., P.O. Box 2115, Salinas, California.

PAR. 23. Respondent West Coast Farms (hereafter "West Coast") is a partnership organized, existing and doing business under and by virtue of the laws of the State of California. West Coast maintains its home office and principal place of business at 470 West Beach St., P.O. Box 809, Watsonville, California.

PAR. 24. Respondents Admiral, Hansen, California, Maggio, D'Arrigo, Eckel, Green Valley, Growers, Harden, Norton, Baillie, Let-Us-Pak, Merit, Merrill Pacific, Englund, Royal, Salinas Lettuce, Salinas Marketing, Garin, United Brands and West Coast (sometimes referred to as "respondent marketers") market fresh produce, including lettuce, primarily from the growing areas of California and Arizona. The total sales of lettuce by respondent marketers in the Salinas, California area in 1973 was substantial, approximately 20,000,000 cartons. Each respondent marketer is a member of respondent Central.

PAR. 25. In the course and conduct of respondent marketers' business of offering for sale, selling, shipping or causing the shipping of fresh produce, including lettuce, from the State of California to persons, corporations or partnerships located in states other than the State of California, and/or in the maintenance by some respondent marketers of selling offices in both California and Arizona, respondent marketers have been and are now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 26. Respondent Central is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act by virtue of its functions as the vehicle by which its members fix, control,

establish or maintain the price or price ranges of lettuce which is shipped by respondent's members in interstate commerce.

PAR. 27. Except to the extent that competition has been hampered and restrained by reason of the practices hereinafter described, respondent marketers have been in substantial competition with each other and other marketers of fresh produce, including lettuce.

[7]

PAR. 28. Since approximately May of 1972, when respondent Central was incorporated, Central and respondent marketers have engaged in a plan, policy, or course of action, the purpose of which is to fix, control, establish or maintain the prices, or price ranges, or price floors, or price ceilings, at which each respondent marketer offers to sell or sells lettuce.

PAR. 29. In furtherance of the plan, policy, or course of action referred to above, Central and respondent marketers have engaged, among others, in one or more of the following acts or practices, each of which constitutes, in itself, an illegal act or practice:

(a) On or about May, 1973, each respondent marketer agreed in writing to sell lettuce to all customers only at prices within the limits of the ceiling prices and floor prices established on a weekly or daily basis by Central.

(b) Representatives of respondent marketers have met, under the auspices of respondent Central, and have discussed or agreed upon prices, or price ranges, or floor or ceiling prices at which each respondent marketer would sell lettuce to their customers.

(c) Respondent marketers have offered to sell or have sold lettuce to their customers at the prices, or price ranges, or floor or ceiling prices discussed or agreed upon at meetings held under the auspices of respondent Central.

PAR. 30. The above acts and practices have or may have the capacity to unduly hinder, suppress, lessen and eliminate competition between respondent marketers and between respondent marketers and other marketers of lettuce and deprives or may deprive the consuming public of prices determined by free and open competition in the sale of lettuce or other fresh produce and thus constitute unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY MORTON NEEDELMAN, ADMINISTRATIVE
LAW JUDGE

MARCH 13, 1975

[3] I

STATEMENT OF THE CASE

The Federal Trade Commission issued a complaint on June 10, 1974, charging respondent Central California Lettuce Producers Cooperative (hereinafter "Central"), and its 22 members with a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) by reason of illegal price-fixing in the sale of lettuce.

Prior to filing an answer, respondents moved to dismiss the complaint on the grounds, first, that Central comes within the antitrust exemption for agricultural cooperatives contained in Section 6 of the Clayton Act, and the Capper-Volstead Act of 1922; and second, that since Central is an exempt cooperative only the Secretary of Agriculture has authority to review its pricing practices. On September 4, 1974, I ruled that the Secretary of Agriculture does not have exclusive jurisdiction and the Federal Trade Commission may properly assert its own jurisdiction to determine all the issues in this case including the very issue of the existence of an antitrust exemption.¹ I said at the time that the exemption issue is so closely intertwined with the merits of the case that a motion to dismiss could not [4] be granted, but I indicated the respondents would be given ample opportunity to present evidence as well as legal argument to show why they are entitled to a Capper-Volstead exemption. Subsequently, I ruled that respondents' motion to dismiss on the grounds of lack of jurisdiction may not be certified to the Commission and respondents were ordered to file an answer.²

Respondents' answer dated September 20, 1974, admitted, with certain minor exceptions, the allegations respecting the identity of each of the respondents. The answer also admitted that each of the individual respondents is engaged in commerce as "commerce" is

¹ See, Order Denying Motion to Dismiss and Request for Oral Argument and Setting Date for Filing of Answer (September 4, 1974). Addressing the argument that the Secretary of Agriculture has exclusive or primary jurisdiction over the exemption question, I said that this view has been "unequivocally rejected" by the Supreme Court after "full consideration" was given to the legislative history. *Maryland and Virginia Milk Producers Assn., Inc. v. United States*, 362 U.S. 458, at 462-463 (1960); *United States v. Borden Co.*, 308 U.S. 188 (1939). In addition, I noted that the plain language of the statute, as well as the legislative history and the decided cases compel the conclusion that the Capper-Volstead Act grants no more than auxiliary power to the Secretary in certain special circumstances, and even if the Secretary should exercise that power, the Commission need not stay its hand. *Washington Crab Assn., et al.*, 66 F.T.C. 45 (1964).

² See, Order Denying Respondents' Request for Certification to the Commission pursuant to Section 3.23(b) and Granting Further Time to Answer (September 16, 1974).

defined in the Federal Trade Commission Act by reason of the fact that they all sell lettuce across state lines. All other material allegations of the complaint were denied and respondents again asserted the affirmative defense that the Commission lacked jurisdiction because of the exempt status of Central and its members.³

With the joinder of issue, a prehearing conference was held on October 15, 1974. After listening to the arguments of both parties, it appeared to the Administrative Law Judge that the facts of the case could be stipulated and on the basis of that stipulation a decision could be rendered on both the applicability of the Capper-Volstead exemption and whether a substantive antitrust violation had occurred.

[5] The parties agreed to follow this suggested course and on December 11, 1974, a stipulation, with exhibits attached, was filed. Thereafter, on January 20, 1975, motions and briefs and accompanying affidavits in support of summary decision were submitted by both parties; replies were filed on February 21, 1975, and oral argument on the cross-motions was heard on February 27, 1975.

Based on the factual stipulation and exhibits as well as the briefs filed in support of the cross-motions for summary decision, I make the following findings of fact, and conclude that complaint counsel's motion for summary decision should be granted.

II

FINDINGS OF FACT

Central and Its Members

1. This case involves the formation and subsequent pricing activity of Central California Lettuce Producers Cooperative (hereinafter "Central"), an association of 22 lettuce producers located in the Salinas-Watsonville-King City area of California and who, together, account for a significant share of the total production in the United States of this important fresh food. (Finding 37)

2. Central was incorporated on June 8, 1972, as a nonprofit cooperative association without capital stock under the provisions of Chapter 1, Division 20, of the Agricultural Code of California, West's Ann. Agric. Code, §§ 54001, *et seq.* (Stip. ¶¶ 2, 6; Ex. B-1)

3. Central began functioning in May 1973, when it signed an

³ Another affirmative defense relating to alleged denial of an opportunity to present and discuss offers of settlement as provided by Sections 2.31 and 2.34 of the Commission's Rules and 5 U.S.C. 554 has not been adequately briefed to the Administrative Law Judge to the point where an initial decision can be rendered on this issue. Moreover, the Commission's policy relating to administration of Part 2 of its Rules is not a matter properly before an Administrative Law Judge.

identical "Cooperative Marketing Agreement" (hereinafter "CMA") with each of the following 22 individual respondents named in the complaint: Admiral Packing Company; Albert C. Hansen d/b/a Hansen Farms; California Coastal Farms, Inc.; Carl Joseph Maggio, Inc.; D'Arrigo Bros. Co. of California; Eckel Produce Co.; Green Valley Produce Co-Op; Growers Exchange, Inc.; Harden Farms of California; J. R. Norton Co.; Jack T. Baillie Co., Inc.; Let-Us-Pak; Merit Packing Co.; Merrill Farms; Pacific Lettuce; R. T. Englund Co.; Royal Packing Co.; [6] Salinas Lettuce Farmers Cooperative; Salinas Marketing Cooperative; The Garin Co.; Inter Harvest, Inc., a

subsidiary of United Brands Co.; and West Coast Farms. (Stip. ¶ 1)⁴
[9]

*The Production and Marketing of Lettuce*⁵

4. The practices of Central and its members, which are the subject of this proceeding, take place in a lettuce industry consisting of growers, grower-shippers, and shippers, as well as brokers and buyers

⁴ In the joint answer filed by the 22-member respondents, each admits the complaint allegations respecting corporate identity. Minor errors in the complaint with respect to respondents J. R. Norton Co. and Inter Harvest, Inc. were corrected by stipulation (see, Order Incorporating Stipulation Into Record, March 3, 1975). The corporate identities of the 22 members of Central are as follows:

Respondent Admiral Packing Co. is a California corporation with its home office and principal place of business at 495 Brunken Ave., P.O. Box 1089, Salinas, California.

Albert C. Hansen is an individual doing business as Hansen Farms with its home office and principal place of business at 1941 Alisal Rd., P.O. Box 269, Salinas, California.

Respondent California Coastal Farms, Inc. is a California corporation with its home office and principal place of business at 1140 Abbott St., P.O. Box 811, Salinas, California.

Respondent Carl Joseph Maggio, Inc. is a California corporation with its home office and principal place of business at South 1st St. & Lonoak Rd., P.O. Box 536, King City, California.

Respondent D'Arrigo Bros. Co. of California is a California corporation with its home office and principal place of business at 706 West Market St., P.O. Box 850, Salinas, California.

Respondent Eckel Produce Co. is a California partnership with its home office and principal place of business at 740 Airport Blvd., P.O. Box 1027, Salinas, California.

Respondent Green Valley Produce Co-Op is a California corporation with its home office and principal place of business at 1148 Abbott St., P.O. Box 2123, Salinas, California.

Respondent Growers Exchange, Inc. is a California corporation with its home office and principal place of business at 740 Airport Blvd., P.O. Box 479, Salinas, California.

Respondent Harden Farms of California is a California corporation with its home office and principal place of business at 1102 Growers St, P.O. Box 779, Salinas, California.

Respondent J. R. Norton Co. is an Arizona corporation with its home office and principal place of business at Front & Gabilan Sts., P.O. Box 5375, Salinas, California.

Respondent Jack T. Baillie Co., Inc. is a California corporation with its home office and principal place of business at 634 South Sanborn Rd., P.O. Box 268, Salinas, California.

Respondent Let-Us-Pak is a California partnership with its home office and principal place of business at 740 Airport Blvd., P.O. Box 225, Salinas, California.

Respondent Merit Packing Co. is a California corporation with its home office and principal place of business at 634 South Sanborn Rd., P.O. Box 1649, Salinas, California.

Respondent Merrill Farms is a California corporation with its home office and principal place of business at 1067 Merrill St., P.O. Box 659, Salinas, California.

Respondent Pacific Lettuce is a California corporation with its home office and principal place of business at Rianda & Prader Sts., P.O. Box 534, Salinas, California.

Respondent R. T. Englund is a California partnership with its home office and principal place of business at 271 Rianda St., P.O. Box 517, Salinas, California.

Respondent Royal Packing Co. is an Arizona corporation. Royal maintains an office and place of business at 91 Spicer St., P.O. Box 2337, Salinas, California.

Respondent Salinas Lettuce Farmers Cooperative is a California corporation with its home office and principal place of business at 624 South Sanborn Rd., P.O. Box 594, Salinas, California.

Respondent Salinas Marketing Cooperative is a California corporation with its home office and principal place of business at 1222 Merrill St., P.O. Box 357, Salinas, California.

Respondent The Garin Co. is a California corporation with its home office and principal place of business at 634 South Sanborn, P.O. Box 1731, Salinas, California.

Respondent United Brands Company is a New Jersey corporation with its home office and principal place of business at Prudential Center, Boston, Mass. United Brands markets fresh produce, including lettuce, through a wholly-owned subsidiary, Inter Harvest, Inc., whose home office and principal place of business is located at 122 East Alisal St., P.O. Box 2115, Salinas, California.

Respondent West Coast Farms is a California partnership with its home office and principal place of business at 470 West Beach St., P.O. Box 809, Watsonville, California.

⁵ The stipulated facts relating to the lettuce industry are derived from some of the findings on the subject in the Initial Decision in F.T.C. Dkt. No. 8835, *United Brands Company* (Slip Opinion dated March 19, 1973 [83 F.T.C. 1614]).

located at various shipping points. The shipping points change during the year. Starting with spring shipments in May and until October, the Salinas-Watsonville-King City area (Monterey and Santa Cruz Counties, California) furnishes the major share of lettuce. In November, most lettuce comes from Arizona. And from December through March, the major source, again, is California (the Imperial Valley, and, especially in March, the Blythe District of the Imperial Valley). During April, as in November, the largest share comes from Arizona. In addition to these major shipping points, smaller amounts of lettuce come from other areas from time to time. (Stip. ¶ 25(a))

5. Lettuce is a perishable food which means that once it ripens, it must be harvested within three or four days. (Stip. ¶ 25(a))

6. Harvesting decisions are made on a day-to-day basis and depend on such factors as volume shipped and the prices received on the preceding day, information as to the "unloads" and prices in major terminal markets, local weather conditions, weather conditions in terminal markets, and the condition of the crop. (Stip. ¶ 25(a))

7. After the harvesting decision is made, lettuce is cut, packed, and inspected in the field. Lettuce is normally packed 24 heads to a cardboard carton and then trucked to a vacuum cooler, where the temperature is lowered to about 34 degrees. From the vacuum cooler, the cartons are shipped by rail or truck to destinations throughout the United States. Again, because it is a perishable product, it must be shipped on the same day it is cut or, at the latest, the next day. (Stip. ¶ 25(a))

[10] 8. Buyers and buyer representatives may inspect the lettuce at the vacuum cooling plant or in the field. Inspection normally takes place before a final purchase is made. Buyers compare quality as between different grower-shippers or between the lettuce produced in different fields but handled by the same shipper or grower-shipper. Quality is an important factor in pricing and accounts in significant measure for the range of lettuce prices at each shipping point. (Stip. ¶ 25(a))

9. Most lettuce is shipped "naked" in the carton; that is, the heads are not individually wrapped. The clear plastic film in which lettuce is sometimes displayed in retail stores is ordinarily added by the store after the lettuce head is cut and trimmed of any discoloration that may have taken place in transit. While lettuce, both wrapped and unwrapped, is not advertised to consumers on a brand basis, individual label names are used by growers and certain labels have achieved some measure of trade recognition for quality. (Stip. ¶ 25(a); Affidavit of John Derdivanis, January 15, 1975, attached to Respon-

dents' Memorandum in Support of Motion For Summary Decision, January 20, 1975.)

10. Growers, grower-shippers, and shippers keep abreast of the market by contacts with one another and through the services offered by the Federal-State Market News Service. By personal contact, and by telephone, and by following the publications of the Federal-State Market News Service, both sellers and buyers have available the latest information relating to the price and the volume of lettuce being sold. This includes information on "unloads" and prices in terminal markets, on weather conditions in these markets, as well as in other producing areas; the shipping volume and price for the preceding day; and also the current day's volume and pricing. Market News reporters seek and disseminate information on both the selling and buying side of the market. This is done through contacts with shippers and with purchasers. This information is verified and published the following day. (Stip. ¶ 25(a))

[11] 11. As indicated in Finding 6, lettuce is sold on a day-to-day basis. Negotiations over any particular sale begin in the morning and terminate in the afternoon after each party has had the opportunity of informing himself fully on the day's market, both through the Market News Service and by contact with the trade. The buyers are represented by brokers or by their own representatives. (Stip. ¶ 25(a))

12. Most lettuce is sold f.o.b. at the shipping point. However, some lettuce is sold on a consignment basis. This usually represents an established relationship between a particular terminal market wholesaler and grower-shipper with a consequent sharing of the profits or losses involved in resale at the terminal market. (Stip. ¶ 25(a))

13. At times, consignments are made on a distress basis — that is, cars that could not be sold at the shipping point are consigned to a wholesaler or another representative who will undertake to sell the contents at the terminal market for the best price he can get. In other words, the car has a "home," where a designated representative will undertake to sell it. (Stip. ¶ 25(a))

14. In the absence of either a shipping point sale or a consignment, a grower-shipper may "roll" the car and endeavor to sell it while it is en route toward Eastern markets. Otherwise, he may "no-bill" the car — that is, provide no bill of lading for that day but hold the car over for another day for possible sale or consignment at that time. (Stip. ¶ 25(a))

15. To the extent that there exists any substantial volume of no-bills, rollers, and distress consignments, this tends to depress the market since such cars are surplus at the going prices. (Stip. ¶ 25(a))

