

Complaint

90 F.T.C.

IN THE MATTER OF
WALGREEN CO.

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

Docket C-2897. Complaint, Aug. 3, 1977—Decision, Aug. 3, 1977

This consent order, among other things, requires a Deerfield, Ill. retail drug store chain, to cease disseminating advertisements that offer any item for sale, unless such item is available for sale at or below advertised price, in reasonably sufficient quantities to meet anticipated demands. Further, respondent is required to conspicuously post advertisements and disclosure statements at designated locations; maintain specified business records; and institute a surveillance program designed to ensure that its stores comply with the terms of the order.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondent: *Pasquale A. Zambrino and John O'Connell,*
Deerfield, 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 Walgreen Co., 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 Walgreen Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 200 Wilmot Road, Deerfield, Illinois.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the operation of a large chain of retail drug stores throughout the United States. Its national distribution of products is broadened by the franchising of over 1800 independently owned "Walgreen Agency Stores." Respondent's volume of business has been and is substantial. In the operation of its retail drug stores, respondent offers to its customers an extensive line of general merchandise, drug and cosmetic products. Many of the said products offered for sale and sold are manufactured or processed by respon-

dent through its various divisions, subsidiaries and affiliates at manufacturing and processing plants located in various states. Many of the said products, however, are purchased from numerous independent suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid general merchandise, drug and cosmetic products to be shipped and distributed from the aforesaid manufacturing and processing plants or from its other sources of supply to warehouses and distribution centers and thereafter to its retail drug stores located in various states other than the state of origination, distribution or storage of said products. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in the production, processing, distribution, advertising, offering for sale and sale of the general merchandise, drug and cosmetic products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, and for some time last past respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid general merchandise, drug and cosmetic products by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said products from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase from respondent of the said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of the said advertisements list or depict the aforesaid general merchandise, drug and cosmetic products and also contain statements and representations concerning the price or terms at which said products would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and geographical areas in which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated and now being disseminated in various areas of the United States served

by respondent's retail drug stores, respondent has represented and is now representing directly or by implication that in those stores covered by such advertisements, during the effective periods of the advertised offers, the items listed or depicted in such advertisements would be or are:

- A. Readily available for sale to customers;
- B. Conspicuously available for sale at or below the advertised prices; and
- C. Sold to consumers at or below the advertised price.

PAR. 6. In truth and in fact, in a number of respondent's retail drug stores located in metropolitan areas in which the aforesaid advertisements were disseminated, and covered by such advertisements during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisement were or are:

- A. Not readily available for sale;
- B. Not conspicuously available for sale at or below the advertised prices; or
- C. Sold to customers at a price higher than the advertised price.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive.

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

- A. Readily available for sale to customers; or
- B. Conspicuously available for sale at or below the advertised prices;

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

PAR. 8. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, as aforesaid, and during the effective periods of such advertised offers at certain stores covered by said advertisements, by selling said items or other merchandise to customers at prices higher than the advertised prices, respondent has been and now is engaged in unfair acts and practices.

PAR. 9. In the course and conduct of its business, and at all times

referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail general merchandise, drug and cosmetic business.

PAR. 10. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statement and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago 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 Sec. 2.34 of its Rules, the Commission hereby

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

1. Respondent Walgreen Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 200 Wilmot Road, Deerfield, Illinois.

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 Walgreen Co., a corporation, its successors or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of general merchandise, drug or cosmetic products, hereafter sometimes referred to as items, offered or sold in its retail drug stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless during the effective period of the advertised offer at each retail store covered by the advertisement:

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

2. There is a sign or other conspicuous marking at the place where an item advertised below regular shelf price is displayed for sale, clearly disclosing that the item is "as advertised" or "on sale" or words of similar import as appropriate, and disclosing on such sign or marking, the advertised price;

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

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

The Commission recognizes that technical per se violations of Section I of this order are inevitable despite the honest best efforts of

respondent to ensure availability and proper pricing of advertised items. Therefore, in determining compliance with Section I of this order, the Commission will consider (a) all circumstances surrounding nondelivery of advertised products which were actually ordered in quantities sufficient to meet reasonably anticipated demands but were not delivered due to circumstances beyond respondent's control, and (b) all circumstances surrounding failure to make advertised items conspicuous and readily available for sale at or below the advertised prices due to circumstances beyond respondent's control.

Provided, it shall constitute a defense to a charge of unavailability under subparagraph I.A.1. if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records and affidavits as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand, or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such nondelivery acted immediately to contact the media to correct the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) respondent immediately offered to customers on inquiry a "rain check" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price, or a similar product of equal or better quality at or below the advertised price of the unavailable product.

Provided, further, that it shall not be deemed a violation of subparagraphs I.A.1., I.A.2., I.A.3., or I.A.4., if respondent is complying with a specific exemption, limitation or restriction with respect to store, item or price which is clearly and conspicuously disclosed in all advertisements for the product in question.

Provided, further, that an advertised item which is usually and customarily individually marked with a price, need not be marked with the advertised price but may remain marked at its regular price if both (i) a conspicuous sign at the site of the display of such item clearly states that the cashiers know the sale price; and (ii) the cashiers do in fact have a written list containing such sale price, have been instructed to charge the sale price for said item, and do in fact charge the customer the sale price.

II.

It is further ordered, That throughout each advertised sale period in each of its retail stores covered by an advertisement, respondent shall post conspicuously (1) at or near each doorway affording

entrance to the public, and (2) at or near the place where customers pay for merchandise, notices which contain the following information:

- A. A copy of the advertisement.
- B. A statement that: "All items listed in the advertisement are required to be available for sale at or below the advertised price."
- C. A clear and conspicuous statement of respondent's rain check program which will inform customers that:
 1. A rain check will be promptly issued by any store employee when an advertised item is unavailable.
 2. A rain check will enable customers to purchase an unavailable item at the advertised price when stocks are replenished or, if such replenishment is impossible, a similar item of equal or better quality will be substituted.
 3. A rain check will be valid for a period of thirty (30) days.

III.

It is further ordered, That respondent shall cause the following statement to be clearly and conspicuously set forth in each advertisement which represents that items are available for sale at a stated price at any of its stores: "Each of these advertised items is required to be readily available for sale at or below the advertised price in each Walgreen store, except as specifically noted in this ad."

IV.

It is further ordered, That:

- A. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store directors who, directly or indirectly, have any supervisory responsibilities as to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent shall secure a signed statement acknowledging receipt of said order from each such person;
- B. Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform to this order, and shall confer with any duly authorized representative of the Commission;
- C. Respondent shall, for a period of three (3) years subsequent to the date of this order:
 1. Maintain business records which show the efforts taken to

insure continuing compliance with the terms and provisions of this order;

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

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

D. Respondent shall, all other provisions of this order notwithstanding, on or before each of the first three (3) anniversary dates of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order in the preceding year.

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

It is further ordered, That respondent shall notify the Commission at least thirty 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 respondent which may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty 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.

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

AMREP CORPORATION

Docket 9018. Interlocutory Order, Aug. 10, 1977

General counsel directed to petition United States District Court (S.D.N.Y.) for grand jury testimony; and procedures established for *in camera* review by ALJ and access to testimony by counsel for both sides.

ORDER GRANTING REQUEST FOR APPLICATION TO UNITED STATES DISTRICT COURT FOR GRAND JURY TESTIMONY

In a report of August 2, 1976, the administrative law judge in this proceeding recommended that the Commission seek access to grand jury testimony presented by a prospective witness in this proceeding, Mr. Paul W. Heinz, in a criminal proceeding against this respondent, *United States v. Amrep Corp.*, No. 75 Cr. 1023 (S.D.N.Y.). We took that recommendation under advisement pending completion of the criminal proceedings in the expectation that Mr. Heinz' testimony would be turned over to respondent in those proceedings, 88 F.T.C. 457 (1976). The law judge, in a report of July 27, 1977, now informs us that respondent has not secured access to transcripts of the testimony, and the criminal case has concluded. Respondent requests access to the transcripts for their potential value in impeaching Mr. Heinz' prospective testimony. Accordingly,

It is ordered, That the Commission's General Counsel shall expeditiously petition the United States District Court for the Southern District of New York for discretionary release, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, of all transcripts of grand jury testimony presented by Paul W. Heinz, in connection with *United States v. Amrep Corp.*, No. 75 Cr. 1023.

It is further ordered, That should any such transcripts be secured by the General Counsel acting on the Commission's behalf, they shall be delivered to the Administrative Law Judge in this proceeding, who shall review them *in camera* to determine whether they would be producible after direct examination of Mr. Heinz, under the standards in conformity with the Jencks Act which the Commission has established, *Ernest Mark High*, 56 F.T.C. 625, 632-633 (1959); *L. G. Balfour Co.*, 69 F.T.C. 1118 (1969); *Inter-State Builders, Inc.*, 69 F.T.C. 1152 (1969); *Star Office Supply Co.*, 74 F.T.C. 1595 (1968). Access may be granted to complaint counsel in advance of hearings to enable them to reassess whether to elicit testimony from Mr. Heinz. Access to respondent should be granted after direct examination of Mr.

140

Interlocutory Order

Heinz if such transcripts are within the Commission's Jencks Act standards.

IN THE MATTERS OF

BRISTOL-MYERS COMPANY, ET AL. D. 8917

AMERICAN HOME PRODUCTS CORPORATION, ET AL.
D. 8918

STERLING DRUG INC., ET AL. D. 8919

Dockets 8917, 8918, 8919. Interlocutory Order, Aug. 11, 1977

Denial of motion by complaint counsel for extension of time in which to file application for interlocutory appeal.

ORDER DENYING MOTION FOR EXTENSION OF TIME

Complaint counsel in these three related proceedings jointly move for an extension of time for filing with the Commission an application for interlocutory review under Section 3.23(a)(1) of our Rules of Practice. Applications for review under this provision are required to be filed "within five (5) days after notice of the Administrative Law Judge's ruling." The order from which counsel intend to appeal would grant respondents access to what are described as "two non-contemporaneous interview reports prepared by a staff attorney."

An extension of time is sought, in complaint counsel's words, "in order to seek appeal alternatively under Section 3.23(b) of the Rules," evidently because of counsel's view that the Administrative Law Judge would be inclined to rule that the question presented was suitable for interlocutory appeal. Delaying their filing under subsection (a)(1) until the filing under subsection (b) is due would assertedly "avoid the needless duplication in filing essentially identical motions before both the Commission and the Administrative Law Judge."

We have great difficulty in following complaint counsel's reasoning in this matter. An application for review under Section 3.23(a)(1) addresses itself directly to the Commission's discretion, without the necessity for a ruling by the Administrative Law Judge. On the other hand, no application may be filed with the Commission under Section 3.23(b) in the absence of:

a determination by the Administrative Law Judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.

Even if such a determination is made, the decision whether or not to entertain an appeal would still be committed to the Commission's

discretion; that is, the posture of the appeal would in no way have been advanced by the additional time and effort involved in pursuing subsection (b) procedures.

Moreover, the granting of complaint counsel's request would make a nullity of the 5-day time limit contained in subsection (a). Similarly situated applicants could always seek subsection (b) certification as well as a subsection (a) appeal, thereby avoiding the time constraint. Because the time limitation serves the important purpose of reinforcing the ALJ's control over the orderly progress of adjudicative hearings, we cannot countenance such a result.

It is therefore ordered, That the motion is denied.

Complaint

90 F.T.C.

IN THE MATTER OF

TRW INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SECTION 8 OF THE
CLAYTON ACT

Docket 9084. Complaint, June 17, 1976 — Decision, Aug. 11, 1977

This consent order, among other things, requires a Shaker Heights, Ohio firm, Addressograph-Multigraph Corporation, to cease interlocking directorates by seating on its board of directors any person who is simultaneously serving on the board of directors of any competitive company.

Appearances

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

For the respondents: *Brent L. Henry* and *Robert H. Lawson, Jr.*, *Jones, Day, Reavis & Pogue*, Cleveland, Ohio for TRW Inc. *Joseph D. McGrath*, Shaker Heights, Ohio for Addressograph-Multigraph Corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent TRW Inc. (hereinafter TRW), is an Ohio corporation and maintains its principal office at 23555 Euclid Ave., Cleveland, Ohio. TRW has capital, surplus, and undivided profits aggregating more than One Million Dollars (\$1,000,000). TRW is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and is engaged in or its business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent Addressograph—Multigraph Corporation (hereinafter Addressograph) is a Delaware corporation and maintains its principal office at 20600 Chagrin Boulevard, Shaker Heights, Ohio. Addressograph has capital, surplus, and undivided profits aggregating more than One Million Dollars (\$1,000,000). Addressograph is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and is engaged in or its business affects commerce, as

"commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Horace A. Shepard is an individual. His business address is the same as that of TRW.

PAR. 4. On or about April 29, 1969, respondent Horace A. Shepard was elected director and chief executive officer of TRW and has served in such capacities with TRW from on or about April 29, 1969, until the present. On or about November 4, 1971, respondent Horace A. Shepard was elected director of Addressograph and has served in such capacity with Addressograph from on or about November 4, 1971, until on or about November 6, 1975.

PAR. 5. During all or part of the period January 1, 1973 through and including November 6, 1975, the business of TRW and Addressograph included, but was not limited to, the manufacture, sale and distribution in commerce of point-of-sale credit authorization equipment and teller-operated bank transaction equipment, and other such equipment used for credit validation, check cashing validation, recording of deposits and withdrawals from financial institutions, and inventory recordkeeping.

PAR. 6. By the nature of their business as hereinabove described and location of operations with respect thereto, Addressograph and TRW were competitors, concurrent with respondent Horace A. Shepard's membership on the Boards of Directors of TRW and Addressograph, during part or all of the period January 1, 1973 through and including November 6, 1975, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 7. The simultaneous membership of respondent Horace A. Shepard on the Boards of Directors of respondents TRW and Addressograph constitutes a violation of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent, Addressograph-Multigraph Corporation, named in the caption hereto, with violation of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, as amended, and the respondent, Addressograph-Multigraph Corporation, having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; 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 the 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 issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission, having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent Addressograph-Multigraph Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, maintaining an office at 20600 Chagrin Boulevard, Shaker Heights, Ohio.

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

ORDER

I

It is ordered, That Addressograph-Multigraph Corporation, its successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, on its board of directors any individual who serves as a director of any other corporation if Addressograph-Multigraph Corporation and such other corporation are, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.

II

It is further ordered, That within thirty (30) days of the date of

service of this order Addressograph-Multigraph Corporation shall review and retain, as to each member of its board of directors, a descriptive listing of all products and services produced or sold by each corporation of which such director serves, or has been nominated to serve, as a director. Such listing shall include the name and address of each corporation.

III

It is further ordered, That Addressograph-Multigraph Corporation, prior to each election of directors or to the solicitation of proxies for such election, shall review and retain, as to each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and each nominee for a directorship (who is not then a director), a descriptive listing of all products and services produced or sold by each corporation of which such director or nominee serves, or has been nominated to serve, as a director. Such listing shall include the name and address of each corporation.

IV

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

V

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

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, Aug. 18, 1977

Denial of complaint counsel's application for review of ALJ's order denying reconsideration of prior order which disallowed request for substitution of witnesses on previously submitted list.

ORDER DENYING APPLICATION FOR REVIEW

Complaint counsel here seek interlocutory review of a July 13, 1977 order by Administrative Law Judge Hyun, denying reconsideration of his June 14, 1977 order, which, in essence, disallowed a request for substitution of witnesses on a previously submitted list. Complaint counsel's application is filed notwithstanding the Administrative Law Judge's denial, by order of July 20, 1977, of a requested determination under Rules of Practice Section 3.23(b) which would have allowed interlocutory appeal.

Section 3.23 of our Rules, by its terms, exhausts the available avenues for interlocutory appeal to the Commission. Since no contention is or could be made that an appeal will lie in this case under subsection (a) of this section, and the requisite determination under subsection (b) was denied, there would appear to be no basis for entertaining the present application.

Complaint counsel nonetheless urge that the assertedly grave impact of the Administrative Law Judge's ruling invokes our "inherent power to review a ruling by an administrative law judge" even where the requirements of Section 3.23 are not met. As authority for the existence of such a power, they cite two rulings in *Kellogg Co., et al.*, reported at 83 F.T.C. 1756 (1974) and 86 F.T.C. 650 (1975). Both of these rulings dealt with applications, like the present one, premised upon our inherent power to review interlocutory rulings. In both instances the applications were denied. To be sure, there is language in both rulings indicating that review might be granted on a showing of clear abuse of discretion on the part of the Administrative Law Judge. 83 F.T.C. at 1758; 86 F.T.C. at 651. Another ruling in the same matter, reported at 86 F.T.C. 318, may be read as suggesting that a showing of irreparable harm to the appealing party is also requisite to its exercise. See 86 F.T.C. at 319, n. 1.

These tests are not met here. Moreover, the decision we are asked to review is peculiarly of the sort best left to the discretion of the Administrative Law Judge. Far from being an issue of "law or policy"

which we might appropriately resolve on interlocutory appeal, it goes to the heart of the Administrative Law Judge's duty to ensure that the hearing proceeds fairly and expeditiously.

It is therefore ordered, That the application is denied.

Interlocutory Order

90 F.T.C.

IN THE MATTERS OF

BRISTOL-MYERS COMPANY, ET AL. D. 8917

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

D. 8918

STERLING DRUG INC., ET AL. D. 8919

Dockets 8917, 8918, 8919. Interlocutory Order, Aug. 23, 1977

Order denying motion of complaint counsel for interlocutory review of ruling of Administrative Law Judge which granted respondents access to two reports of interviews with one of respondents' witnesses.

ORDER DENYING APPLICATION FOR INTERLOCUTORY APPEAL

Complaint counsel in these three proceedings apply for interlocutory review of the Administrative Law Judge's ruling granting access, in connection with a joint hearing to take testimony applicable to each case, to two reports, prepared by complaint counsel, of interviews with one of their witnesses. The application follows a ruling dated August 2, 1977, by the Administrative Law Judge determining that the question involved meets the standards for interlocutory review set out in Section 3.23(b) of our Rules of Practice.

This application for review was the subject of an earlier motion, filed July 29, 1977, entitled "Motion For Extension Of Time In Which To File Application For Interlocutory Appeal Under Section 3.23(a)(1)." It was urged that the Administrative Law Judge's order "required the disclosure of Commission records," in the terms of that portion of the Rule; and that characterization seems unassailable on the basis of the facts before us. We denied that motion because the only ground urged for an extension was complaint counsel's desire to seek appeal simultaneously under both subsection (a)(1) and subsection (b). We held that such a procedure:

. . . would make a nullity of the 5-day time limit contained in subsection (a). Similarly situated applicants could always seek subsection (b) certification as well as a subsection (a) appeal, thereby avoiding the time constraint. Because the time limitation serves the important purpose of reinforcing the ALJ's control over the orderly progress of adjudicative hearings, we cannot countenance such a result.

This consideration applies with equal force to the present motion. Complaint counsel could have made application for review of the order in question under Section 3.23(a)(1), within the five-day period prescribed thereunder. They did not. We cannot now countenance the

circumvention of that time limit by granting an application under Section 3.23(b) for review of the same order.

It is therefore ordered, That the motion is denied.

Complaint

90 F.T.C.

IN THE MATTER OF

HEIRLOOM COLLECTION, INC., ET AL.

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

Docket C-2898. Complaint, Aug. 25, 1977 — Decision, Aug. 25, 1977

This consent order, among other things, requires an Indianapolis, Ind. door-to-door seller of china, crystal, cookware, flatware, and linen, to cease violating the Truth in Lending Act by failing to provide to consumers, in connection with the extension of consumer credit, such disclosures as are required by Federal Reserve Board regulations. Further, the order requires the firm to make conspicuous disclosure of customers' refund rights in lay away plan agreements; to retain, without contractual obligations, merchandise until full cash payment is received; and where such purchase is revoked, to make prompt refund of all monies paid toward full cash price.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondents: *Thomas E. Tobin, Indianapolis, Ind.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described below and sometimes referred to hereinafter as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 The Heirloom Collection, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Future Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Linencrest, Inc. is a corporation organized, existing

and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent George L. Douglass is an individual and an officer of respondent corporations. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of said corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale, sale and distribution of china, crystal, cookware, flatware and linen to the general public.

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

PAR. 4. Subsequent to July 1, 1969, respondents, Future Enterprises, Inc., and George L. Douglass, in the ordinary course and conduct of their business as aforesaid, in connection with credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute retail installment contracts which contain certain credit information. Said respondents do not provide these customers with any other consumer credit information. By and through the use of these contracts, respondents, Future Enterprises, Inc., and George L. Douglass:

1. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
2. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
3. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.
4. Fail to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 5. Subsequent to July 1, 1969, respondents, The Heirloom

Collection, Inc., Linencrest, Inc., and George L. Douglass, in the ordinary course and conduct of their business as aforesaid, have caused and are causing customers to execute layaway contracts for the sale of merchandise. Under said contracts, customers agree to pay for merchandise in more than four installments. Also, under said contracts, said respondents retain the merchandise for most of their customers until the cash price is paid in full. The contracts do not, however, clearly and conspicuously give to customers the right to revoke the purchase at any time prior to full payment of the cash price and delivery of the merchandise, and to request and receive a full and prompt refund of any amounts paid toward the cash price of the merchandise. Said respondents' layaway sales are, therefore, credit sales as "credit sale" is defined in Regulation Z. By and through the use of their layaway contracts, respondents, The Heirloom Collection, Inc., Linencrest, Inc., and George L. Douglass:

1. Fail to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property which is the subject of the credit sale, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.
2. Fail to disclose the amount of any downpayment in money using the term "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.
3. Fail to disclose the difference between the "cash price" and the "cash downpayment," using the term "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.
4. Fail to disclose the sum of the "unpaid balance of cash price" and all other charges individually itemized, which are included in the amount financed but which are not part of the finance charge, using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.
5. Fail to disclose the amount of credit extended, using the term "amount financed," as determined and required by Section 226.8(c)(7) of Regulation Z.
6. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
7. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
8. Fail to disclose the sum of the payments scheduled to repay the indebtedness, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

9. Fail to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

10. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

PAR. 6. Pursuant to Section 103(s) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent The Heirloom Collection, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Future Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Linencrest, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent George L. Douglass is an officer of each of the corporate respondents. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of the corporate respondents.

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 The Heirloom Collection, Inc., a corporation, Future Enterprises, Inc., a corporation, and Linencrest, Inc., a corporation, their successors and assigns, and their officers, and George L. Douglass, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the extension or arrangement for the extension of "consumer credit" as defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 98-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property which is the subject of the credit sale, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to disclose the amount of any downpayment in money, using the term "cash downpayment" as required by Section 226.8(c)(2) of Regulation Z.

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

4. Failing to disclose the sum of the "unpaid balance of cash price" and all other charges individually itemized, which are included in the amount financed but which are not part of the finance charge, using the term "unpaid balance" as required by Section 226.8(c)(5) of Regulation Z.

5. Failing to disclose the amount of credit extended, using the term "amount financed," as determined and required by Section 226.8(c)(7) of Regulation Z.

6. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to disclose the number, amount, and due date or period of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

8. Failing to disclose the sum of the payments scheduled to repay the indebtedness, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

9. Failing to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

10. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

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

12. Failing in any consumer credit transaction to make all disclosures that are required by Sections 226.4, 226.5, 226.6 and 226.8 of Regulation Z in the manner, form and amount specified therein.

Provided, however, that lay away plans shall not be considered extensions of credit subject to the provisions of Regulation Z if under such lay away plans: one, respondents retain the merchandise for the customer until the cash price is paid in full; two, the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the

merchandise; and, three, the customer receives a clear and conspicuous written disclosure contained in the lay away plan agreement of his right to a full refund.

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 deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the sale of the respondents' goods or services, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of their continuing compliance with all the above terms and provisions of this 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
ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket C-2015. Interlocutory Order, Aug. 30, 1977

Denial of respondents' petition to reopen proceeding for modification of the consent order.

ORDER DENYING RESPONDENTS' PETITIONS TO REOPEN THE
PROCEEDING FOR MODIFICATION OF CONSENT ORDER

Respondents ITT Continental and Bates, ITT's advertising agency, petition the Commission, pursuant to Rules of Practice Section 3.72(b), to reopen the above-styled proceeding for purposes of modifying in certain specified aspects Paragraph I.1 of the order entered on August 17, 1971. 79 F.T.C. 248, 254.

Petitioners assert that modification of the order is needed to permit them to conduct consumer tests so as to substantiate intended advertising claims with respect to a new bread product, "Fresh Horizons." However, nothing in the order precludes such testing. Petitioners further assert that Paragraph I.1 of the order is inconsistent with the First Amendment, as applied in the recent series of Supreme Court "commercial speech" cases. The issue of the order's applicability to a particular advertising claim is not before the Commission, however. A hypothetical construction of the order that suggests it might bar truthful, adequately substantiated claims does not justify modification at this time.

The Commission has determined that petitioners have failed to present adequate evidence that changed conditions of fact or law, or the public interest, requires modification of the order. Rules of Practice, Section 3.72(b)(2).

The aforesaid petition is accordingly denied, without prejudice to respondents' right to refile at an appropriate time.

It is so ordered.

Complaint

90 F.T.C.

IN THE MATTER OF
PREMIER CLOTHING CO., INC., ET AL.

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

Docket C-2899. Complaint, Aug. 31, 1977 — Decision, Aug. 31, 1977

This consent order, among other things, requires a New York City clothing manufacturer and distributor to cease misbranding and misrepresenting the wool and constituent fiber content of its products. The firm is also required to advise affected customers that the clothing they purchased was misbranded.

Appearances

For the Commission: *Martin Gorman.*

For the respondents: *Pro se.*

COMPLAINT

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

PARAGRAPH 1. Respondent Premier Clothing Co., 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 120 Fifth Ave., New York, New York.

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

Respondents are engaged in the importation, sale and distribution of clothing products including but not limited to men's and boys' coats.

PAR. 2. Respondents, now and for some time last past, have imported for introduction into commerce, manufactured for introduction into commerce, introduced into commerce, transported, distri-

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

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

Among such misbranded wool products, but not limited thereto, were certain men's and boys' coats stamped, tagged, labeled, or otherwise identified by respondents as "100% cashmere," whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in or affecting commerce, under the Federal Trade Commission Act, as amended.

PAR. 6. Respondents are now and for some time last past have been engaged in the manufacture, offering for sale, sale, and distribution of certain products, namely men's and boys' coats. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce,

as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. Respondents in the course and conduct of their business have made statements on invoices to their customers, misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as "100% cashmere" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 8. The acts and practices set forth in Paragraph Seven have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged in Paragraph Seven were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce, within the intent and meaning of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939; and,

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

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

